

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

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BY ELECTRONIC MAIL

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Re: Lessner, Sidney & Marjorie v. City of Long Branch
Block 15, Lot 3 (7 Garfield Terrace)
Docket No. 001316-2012

Dear Counsel:

This letter constitutes the court's decision following trial. Plaintiff contests the local property tax assessment for tax year 2012 on the above captioned property ("Subject"), located in defendant City of Long Branch ("City"). The contested assessment is as follows:

Land:	\$ 910,200
Improvements:	<u>\$ 141,300</u>
Total:	\$1,051,500

The Chapter 123 ratio applicable to tax year 2012 was 87.91% (providing the Subject's equalized value of \$1,196,110), with an upper limit of 101.1% and a lower limit of 74.72%.

*

PROCEEDINGS

Plaintiff presented a witness who was qualified to testify as an expert in real estate appraisal for purposes of the action, and his report was admitted into evidence without objection. The expert opined the value of the Subject to be \$850,000 as of the October 1, 2011 valuation date by analyzing three sales under the comparable sales approach. Since this would fall outside the upper limit ($\$1,051,500/\$850,000 = 123.7\%$), his value conclusion would reduce the assessment to \$747,235.

After plaintiff's proofs, the City moved to dismiss the complaint under R. 4:37-2. The court denied the same finding that the plaintiff's expert's opinion sufficed as the minimal evidence sufficient in quality to overcome the presumptive correctness of the assessment. See MSGW Real Estate Fund, L.L.C. v. Borough of Mountain Lakes, 18 N.J. Tax 364, 378 (Tax 1998).

The City then presented its expert witness, qualified as such by the court. Her report was admitted into evidence. She opined the Subject's value as being \$1,155,000. This would fall within the upper limit ($\$1,051,500/\$1,155,000 = 91.03\%$), and result in the assessment being affirmed.

For the reasons set forth below, the court affirms the assessment.

FACTS

(A) Subject's Description

The Subject is a single family home located on a rectangular shaped interior lot sized 40' x 160' in the residential (R-1) zone. It is located in the desirable/affluent Elberon section of the City, on a beach block, three lots away from the ocean, amongst a residential neighborhood comprising of single family detached dwellings. Access to the Subject is from a paved street off

of Ocean Avenue which lies to the Subject's west. The Subject is surrounded by other residences. While it has public access to the beach, it also has access to the Beach Association which provides private access to the beach.

Based on his exterior and interior inspection, plaintiff's expert deemed the Subject as having no ocean view, since one could at most glimpse a sliver of the ocean after craning one's neck. The City's expert stated that the Subject had a very minor ocean view from the front yard.

The site is improved with a 2-story old-style colonial home built in 1914, with total of eight rooms of which five are bedrooms. It has two full and one half-bathroom. The total gross living area ("GLA") is 1,798 square feet ("SF").¹ There is a fireplace in the living room, an enclosed front porch and a screened porch in the rear. The basement which measures 790 SF, is unfinished, and houses the mechanical systems and the laundry area. It also has a two-car detached garage. Both experts deemed the improvements to be of average quality and condition.

It is undisputed that the Subject's highest and best use is its present use as a single family residential home.

(B) Comparable Sales Description

(i) Plaintiff's Expert's Comparables

Plaintiff's expert focused only upon the market east of Ocean Avenue which was a more desirable location, as opposed to west of Ocean Avenue where values drop markedly. He stated that the Elberon section of the City was an exclusive neighborhood, second tier to the neighboring township of Deal, another exclusive high-end residential area with more estate and

¹ Plaintiff's expert noted the GLA to be 1,833 SF per the assessor's tax records. The copy of the property record card introduced in evidence by plaintiff reflected the GLA as 1,798 SF.

private sales (i.e., not marketed publicly through the MLS), but with larger homes and sites. Buyers in Deal would also be buyers in the Elberon section of the City.

Due to paucity of sales, the expert chose three Oceanside comparables, all located in the City. One was located in the Elberon section. The other two were located in the redevelopment zone, which, as opposed to the Subject's single-family residential zone, permits commercial and multi-family residential uses. Thus, these two comparables were in a less secluded and more trafficked location than the Subject.

The expert obtained information from the internet and the assessor's records since his research of the Multiple Listing Services ("MLS") did not reveal any sales in his parameters (Oceanside and east of Ocean Avenue). He used information from an expired listing for comparable three on the MLS. He spoke to an adult in comparable two, whom he presumed was the owner, who confirmed that there were no conditions to, or concessions for, the sale. He did not inspect the interior of the comparables, except as to comparable three, where he viewed a portion of the first floor as was visible to him from the front door and through the porch. He viewed the exteriors of all comparables.

He made adjustments for GLA at \$50 per SF, which he stated was less than half of the cost to rebuild the Subject based upon Marshall & Swift's cost data, with depreciation factored in. He noted that land was much more valuable in the Elberon section of the City therefore, his attribution of depreciated cost/value of the improvement of \$50 per SF was reasonable. Neither the court nor the City was provided with details of his cost computation or depreciation analysis.

He also made adjustments for basement (\$10,000 if partial or finished); garage (\$10,000 each); fireplace (a "nominal" amount of \$1,500); bathroom count (\$10,000 for full and \$5,000 for half bath); and 5% for condition. He testified that these amounts were "typical" rule-of-

thumb amount. For bathrooms, the adjustment was one-third of the cost of a new bathroom, the amount a buyer would typically pay, the one-third reduction being the discount or depreciation factor. He also provided adjustments for beachfront location and ocean view (\$250,000 per factor). He testified that he confirmed the reasonableness of these adjustment amounts by consulting with his peers in the real estate appraisal community.

His first comparable was located at 270 Ocean Avenue, about 2.2 miles north of the Subject, and in the redevelopment zone of the City. A 105-year old, three-story home on the beach block, which sat on a lot sized 19,500 SF, it sold January 20, 2011 for \$900,000. According to the tax records, it had seven bedrooms, three bathrooms, a GLA of 3,762 SF, a partial basement, porch/deck, no fireplace or garage.

He made adjustments for the additional bathroom; larger GLA; partial basement; and lack of a two-car garage in the amounts listed above. His adjustments totaled -\$76,450. This resulted in an adjusted price of \$823,550.

During his testimony he stated that he had misconstrued the comparable's location which was beachfront property for which he should have provided a -\$250,000 adjustment, the location being superior to the Subject. He also agreed that it was a three-family house, thus, not an appropriate comparable. He stated that the location adjustment would render the adjusted sale price so far below the adjusted prices of the other two comparables that he would not rely upon this sale as a reliable comparable.

His second comparable was located at 276 Ocean Avenue, two properties away from the first comparable, thus about 2.2 miles from the Subject, and in the redevelopment zone of the City. A 60-year old, two-story home on the beach front, which sat on a lot sized 29,100 SF, it sold October 4, 2011 for \$1.55 million. According to the tax records, it had seven bedrooms,

four full and one half bathrooms, a GLA of 3,568 SF, a full finished basement, two fireplaces, porches, and no garage. He made adjustments for “beach front” location and “beach/ocean” view (\$250,000 each); for additional bathrooms; larger GLA; finished condition of the full basement; lack of a two-car garage; and for two fireplaces. He testified that the he assumed the interior condition would be similar to the exterior, therefore, deemed the interior to be in average condition.² He testified that the comparable’s large lot size did not merit an adjustment because its location in the redevelopment zone rendered the site of less value than the Subject’s site, which being located in the Elberon section had considerable value for land. Effectively, the large but less valuable lot offset the Subject’s smaller (6,400 SF) but much more valuable site, nullifying any adjustments in this regard.

He agreed that it was multi-unit house (four-family). The sale was marked non-usable by the assessor (under category 26). The expert maintained that it was still comparable. In his opinion, the house was more valuable for its income producing potential, but regardless, its location and square footage made it an appropriate comparable to the Subject. He opined that based on his 15+ years of experience, a buyer would view the comparable as having sufficient potential to being converted into a single family home due to the size of the comparable. He claimed that the multi-family aspect was simply an interim use. He noted that the sketch of the home on the copy of the property record card introduced in evidence by the City showed that it looked like a very large single family home even if the card noted it was a four-unit Class 2 property.

² The expert stated in his report that he had made an “extraordinary assumption” that the comparable was in the same “dated and average condition as the Subject” because he could not make an interior inspection, thus, made no adjustments in this regard.

His adjustments totaled -\$604,750 (39% net and 41.6% gross). His report acknowledged that the net adjustment exceeded the “guidelines” but this was due to lack of sufficient similar sales. The resultant adjusted sales price was \$945,250.

The third comparable was located at 7 Plaza Court in the Elberon section of the City like the Subject, less than a mile from the Subject. This sale was listed on the MLS, which listing expired September 9, 2010. It sold later in a private sale September 22, 2010 for \$1.475 million. It is a 2½ story home on the beach block, with a lot sized 7,200 SF. His report listed the house as having six bedrooms (the City’s expert who used the same comparable listed it as four bedrooms); three full and one half baths (the City’s expert listed four full and one half baths), a GLA of 3,291 SF (the City’s expert report listed it as 3,345 SF), a full unfinished basement (the City’s expert noted it as a partially finished basement), with one fireplace, porches (the City’s expert included a deck), and a one-car garage (the City’s expert listed it as a two-car garage). The expert stated that it was significantly upgraded in 2010 (prior to its sale) and that the interior first floor was fully renovated based upon his porch view.

He made an adjustment for “beach” view but at -\$150,000 because a large monolithic structure was built after the comparable was sold which blocked about two-thirds of the ocean view. He made an adjustment for superior condition; additional bathrooms; larger GLA; one-car garage; and one fireplace. His adjusted sale price was \$1,172,600.

Based upon the adjusted prices of the three comparables (\$823,550; \$945,250 and \$1,172,600), he concluded in his report that the Subject’s value should be \$850,000. He testified that this conclusion would still remain even without comparable one. This is because the per SF value of unadjusted sale prices of comparables two and three (sales price divided by the comparables’ respective GLAs or \$434.42 and \$448.19), when multiplied with the Subject’s

GLA of 1,833 SF, provided value conclusions of \$796,000 and \$821,000 which were only “slightly below,” but could be rounded to the concluded value in his report, thus, rendering his conclusion of \$850,000 to be reasonable.

(ii) The City’s Expert’s Comparables

The City’s expert used four oceanfront comparables, all located in the City. None were in the redevelopment zone because of qualitative differences in location, and difficulty of providing adjustments for the same. She testified that the Elberon section of the City, where the Subject is located, was very desirable. Most residences there were second homes to their owners. Being very close to the Township of Deal, the Elberon section attracted a similar market, although Deal homes were generally more expensive.

The expert verified all her sales or attempted to do so. She did not receive a return call on her comparable one or two. One of her comparables lay to the west of Ocean Avenue (the area disavowed by plaintiff’s expert), which although inferior to the Subject’s easterly direction, was usable being in the Elberon section where the Subject was located.

She provided adjustments for location and view (vis-à-vis the ocean). She stated that such adjustments are difficult to support with objective data, however, based upon discussions with peers, she opined a 5% adjustment as being fair.

Her site size adjustment was based upon a review of several land sales in the City, broken down by area (Ocean Front; Ocean Block; Inland (Ocean Avenue west); and Elberon Failed Subdivision).³³ Almost all sales were from 2005 to 2009. Two sales were on 12/14/2011, one in

³³ Plaintiff’s counsel objected to the City’s expert’s testimony (being elicited during her direct examination) and sought to bar her from testifying as to the details on grounds she had not identified parties to the sales or verified whether they were arms-length transactions. The court overruled the objection on grounds that the City expert’s was allowed to testify about the data that she had relied upon, and that plaintiff’s counsel could explore the veracity of the sales, and thus, the reliability of the data, during counsel’s cross-examination of the City’s expert.

the Ocean Front (\$5 million for 0.90 acres) and one in the Ocean Block (\$3 million for 0.75 acres). The median sale price (based upon nine sales) for properties on the Ocean Block (like the Subject) was \$5.3 million. Since the 2011 sale for a property on the Ocean Block was \$3 million, she opined that for adjustment purposes, \$500,000 per acre was reasonable.

Her location adjustment was also based upon the same data (land sales). She stated that Ocean Block location was more desirable, thus, superior to properties located inland. A comparison of the median prices of both showed a difference of about 30%. Thus, she provided a 30% location adjustment.

Adjustments for GLA were based upon an analysis of paired sales. She used the 2005 sales of new homes from a development called "The Bluffs" (which, like the Subject, were in the interior location and not Ocean Front) since no recent such sales were found in the Elberon section. The sales price differential was attributable to the GLA differences which provided a range of the per SF sale price of \$175.90 to \$245.70. She decided to use \$125 per SF based on this data.

Her "typically" provided adjustments included: 5% for condition; \$10,000 per full and \$5,000 per half-baths; \$5,000 to \$10,000 for basement size; \$5,000 per garage bay; \$3,000 for enclosed and screen porches; \$2,000 each for patios and deck; and \$5,000 for a fireplace.

She did not provide any market adjustments because the comparable sales occurred in 2010 and 2011, at which time the real estate market in the City was on a slow but upward trend (by less than 3% per year) based upon her data of single family (usable and new) sales in the City from 2006 to 2012. Due to paucity of such sales in the Elberon section, she opined that she did not have the objective data for making a reliable adjustment for market conditions.

The expert's first comparable sale was the same as plaintiff's expert's third comparable, 7 Plaza Court. However, as noted above, she differed in the description of its physical characteristics (four instead of six bedrooms; four full and one half baths instead of three full and one half baths; GLA of 3,345 SF instead of 3,291 SF; a partially finished basement as opposed to a full unfinished basement; deck; and a two-car garage as opposed to plaintiff's expert's one-car garage). She made the following adjustments to the \$1.475 million sale price: (a) view since it enjoyed a partial ocean view and was thus superior to the Subject; (b) superior condition; (c) two additional full baths; (d) larger GLA; (e) open porches thus, inferior to the Subject; and (f) deck. Her adjustments totaled -\$361,876 (-25% net; 25% gross) for an adjusted sale price of \$1,113,125.

Her second comparable was located at 2 Pullman Avenue. A lot sized 140' x 155' improved by a 1951 cape-cod styled house on the beach block, it sold January 12, 2010 for \$1.46 million. It had four bedrooms; one full and one half bath; GLA of 2,427 SF; a full unfinished basement; open porch; patio; no garage. She made adjustments for: (a) larger site size; (b) superior condition; (c) one less full bath; (d) larger GLA; (e) larger sized basement; (f) open porches; (g) patio; and (h) lack of a garage. Her adjustments totaled -\$237,625 (-16% net; 20% gross) for an adjusted sale price of \$1,222,375.

The third comparable was located at 18 Park Avenue. A lot sized 100' x 240' improved by a 1962 ranch style house on the inland, it sold September 14, 2011 for \$989,900. It had three bedrooms; two full and one half bath; GLA of 1,958 SF; a partial unfinished basement; open porch; patio; two-car garage. She made adjustments for: (a) inferior inland location; (b) larger site size; (b) lack of ocean view; (c) superior condition; (d) larger GLA; (e) larger sized

basement; (f) open porches; (g) patio; and (h) lack of a fireplace. Her total adjustments were \$75,700 (8% net; 65% gross) for an adjusted sale price of \$1,064,700.

The expert's report noted that this sale was listed as non-usable in the assessor's records because it was an estate sale. She however called the attorneys for both parties who confirmed that the sale was an arms-length transaction.⁴ She placed little weight on this sale because it was west of Ocean Avenue; was located inland; and needed several adjustments.

Her fourth comparable was located at 1140 Eaton Avenue. Its lot was sized 200' x 170' and was improved by a 1959 ranch style house on the inland. It sold December 8, 2010 for \$1.1 million. It had three bedrooms; two full and one half bath; GLA of 2,368 SF; a full finished basement which has a kitchen and 2 baths; and a three-car garage. She made adjustments for: (a) inferior inland location; (b) larger site size; (b) lack of ocean view; (c) larger GLA; (d) larger sized finished basement; (e) open porches; (f) patio; and (g) extra bay in the garage. Her adjustments totaled -\$36,250 (-3% net; 74% gross) for an adjusted sale price of \$1,062,750.⁵

The expert's report noted that this sale was listed as non-usable in the assessor's records because it was a private sale (not exposed to the market). She however called the attorneys for both parties who confirmed that the sale was an arms-length transaction.⁶ She placed little weight on this sale because it was west of Ocean Avenue; was located inland; and needed several adjustments.

She reconciled the adjusted sales prices of the four sales, placing 45% weight each to sales one and two, and 5% each to sale three and four, for a value conclusion of \$1,155,000.

⁴ Her report contained both attorneys' names.

⁵ The expert corrected certain adjustments during her testimony thus her adjusted sale price in her report of \$1,063,750 changed to \$1,062,750.

⁶ Her report contained both attorneys' names.

CONCLUSIONS OF LAW

(A) Standard of Review

“Original assessments and judgments of county boards of taxation are entitled to a presumption of validity.” MSGW, *supra*, 18 N.J. Tax at 373. Due to the “strength of the presumption,” a taxpayer has the burden of proving “that the assessment is erroneous” with evidence that must be “definite, positive and certain in quality and quantity to overcome the presumption.” Ibid. (citations and quotations omitted).

Once the presumption of correctness is overcome, the court must determine the value “based on a fair preponderance of the evidence.” Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312-13 (1992). The court’s “independent assessment” depends “on the evidence before it and the data that are properly at its disposal.” F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985). The complainant continues to bear the burden of persuading the court that the “judgment under review” is erroneous. Ford Motor Co., *supra*, 127 N.J. at 314-15.

(B) Valuation Methodology

The sales comparison approach is generally accepted as an appropriate method of estimating value for a residence. Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 377 (App. Div. 2001). The market value for the subject is derived by comparing similar properties that have recently sold, identifying appropriate units of comparison, and making adjustments to the sale prices of the comparable properties based on relevant, market-derived elements of comparison. Appraisal Institute, The Appraisal of Real Estate 301-02 (13th ed. 2008). Both experts used the sales comparison approach, which the court finds suitable.

(C) Credibility of Value Conclusions

The experts themselves placed little to no reliance on three comparables (plaintiff's expert's comparable one, and the City's expert's comparables three and four). Therefore, the court will disregard these sales.

Plaintiff's expert's comparable two is provided least weight because it is a multi-family income producing property located in the redevelopment zone. This use is not similar to the Subject's highest and best use (single family residential) or the comparable's maximal productivity (income). The expert's justification that it is usable because it can be converted to a single family home because of its size, and that the multi-family use was only its interim use, was speculative. There was no objective data showing that this conversion was a reasonable probability. There was no analysis of the costs of demolition/conversion to prove that the comparable would be more valuable as a single family residence, or that the current use was not contributing to the value of either the land or existing improvements. Cf. Thomas J. Lipton, Inc. v. Township of Raritan, 10 N.J. Tax 202, 210 (Tax 1988) (sales of vacant properties which may require to be "adapt[ed] . . . to different . . . uses" such as "conversion to multitenant use are not comparable sales"), aff'd, 11 N.J. Tax 100 (App. Div. 1989). While the market or pool of buyers for the comparable and the Subject would likely share the same desire for the ocean (view and/or proximity), they may not necessarily be of the same mind insofar as the privacy/quiet/less traffic features of the Subject's residential zone. Moreover, the expert's conclusion that the comparable is usable because of its site size conflicts with his testimony that being in a redevelopment zone, larger sites are less valuable than the much smaller lots in the exclusive Elberon section.

The court finds that the sale most comparable to the Subject is 7 Plaza Court (plaintiff's expert's comparable three and City's expert's comparable three). It is similar to the Subject in several aspects such as location, site size, age, garage, and fireplace. Lesser weight is placed on

the City's comparable two because its sale date is farther from the assessment date, and differs in style, age, and site size although it shares the same location and ocean view as the Subject.

The experts' differed on all adjustments. Since "adjustments made to comparable sales are mainly subjective in nature," Owens-Illinois Glass Co. v. City of Bridgeton, 8 N.J. Tax 495, 512 (Tax 1986), the court has to decide their credibility. In this connection, the court can adopt, reject, or adapt, all or a portion of an expert's value opinion. Jersey City, Div. of Water v. Township of Parsippany-Troy Hills, 16 N.J. Tax 504, 528 (Tax 1997), aff'd, 17 N.J. Tax 538 (App. Div. 1998). Although the court must "apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question," it cannot make adjustments without sufficient cognizable factual evidence in the record. Township of Warren v. Suffness, 225 N.J. Super. 399, 413-14 (App. Div.) (citations omitted), certif. denied, 113 N.J. 640 (1988). Nor can it "arbitrarily assign a value to the property not supported in the record." U.S. Life Realty Corp. v. Township of Jackson, 9 N.J. Tax 66, 79 (Tax 1987).

The court was unable to confirm the veracity of the plaintiff's expert's GLA adjustment because he did not provide the requisite cost data or depreciation analysis which he claimed was the basis of his adjustment. The City's expert's paired sales data was more persuasive because they were homes in the similar location as the Subject, and the selection of her per SF value of \$125 was reasonable because her data showed that the 2005-2006 market was at its peak but the 2009 market fell by 30%, and then rose but slowly.

As to site size adjustments, the City's expert's data of land sales included sales from areas in the City which were not exclusive, thus, were dis-similar in land value to homes in the Elberon section. Accordingly, her median amounts are questionable. Nonetheless, her data also showed a land sale in the Elberon section's ocean block (same as the Subject's location) that sold

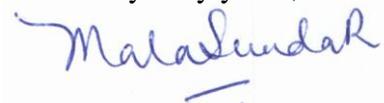
for \$3 million two months after the assessment date, which translated to a per-acre amount of \$4,014,989. Thus, her conclusion of \$500,000 per acre adjustment is supportable.

Both experts opined that they tested their respective adjustments by confirmation from their peers and other experts in the real estate appraisal field. It appears that these peers also had differing views on certain “typical” adjustments such as for bathroom count, garage or fireplace. The court does not need to delve into the reasonableness of these typical adjustments in view of the fact that regardless of their disparity in adjustments, both experts concluded the value of 7 Plaza Court (the most comparable sale) at a number higher than the assessment. The assessed-to-true value ratio under both conclusions are within the upper limit.⁷ Since the court is placing the most weight to this sale, the assessment can be affirmed for this reason alone.

Even if the court were to consider the adjusted sale price of the City’s expert’s comparable two (\$1,222,375) next in weight, and the adjusted sales price of plaintiff’s expert’s comparable two (\$945,250) the least weight due to its highest and best use issue, the court finds that the City’s expert’s value conclusion of \$1,155,000 is reasonable, requiring an affirmance of the assessment.

A final Order and Judgment affirming the assessment accompanies this memorandum opinion.

Very truly yours,

A handwritten signature in blue ink that reads "Mala Sundar". The signature is written in a cursive style with a horizontal line underneath the name.

Mala Sundar, J.T.C.

⁷ Under plaintiff’s expert’s value conclusion, the assessed-to-true value ratio is 89.67% (\$1,051,500/\$1,172,600). Under the City’s expert’s value conclusion, the assessed-to-true value ratio is 94.5% (\$1,051,500/\$1,113,125). Both ratios are lower than the upper limit of 101.1%.