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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: Belle Mer REC, Inc. v. City of Long Branch
Block 16, Lot 3 (1129 Ocean Avenue)
Docket No. 001903-2012

Dear Counsel:

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

Land:	$ 4,862,200
Improvements:	$ 3,239,800
Total:	$ 8,100,000

The Chapter 123 ratio applicable to tax year 2012 was 87.91%, with an upper limit of 101.1% and a lower limit of 74.72%.

*

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 $6,500,000 as of the October 1, 2011 valuation date by analyzing the Subject under the sales comparison approach. This would fall outside the corridor ($8,100,000/$6,500,000=124.6%), which would reduce the assessment to $5,714,150.

After plaintiff's proofs, the City moved to dismiss the complaint for failure to overcome the presumptive correctness of the assessment. The court denied the motion finding that the expert had provided beachfront comparables, albeit from a different municipality, and had sufficiently explained the reasoning for his adjustments for purposes of the liberal standard applicable to such motions under R. 4:37-2, as explicated in MSGW Real Estate Fund, L.L.C. v. Borough of Mountain Lakes, 18 N.J. Tax 364 (Tax 1998).

The City then presented its expert witness whose report was admitted into evidence. She concluded the value of the Subject as $10,500,000 under the sales comparison and cost approaches. This would result in an affirmance of the assessment since the assessed-to-true value ratio would fall within the upper and lower limits. The City's tax assessor also provided factual testimony as to the Subject and a land sale comparable used by the City's expert.

The court finds the plaintiff's expert has not persuaded this court that the assessment should be reduced. Although he credibly testified that there were paucity of sales in the Elberon Section of the City, where the Subject is located, there was one sale in this location close to the assessment date, which he failed to consider although the sale occurred before he completed his expert report. He also failed to consider another sale in a neighboring township which he conceded had a comparable real estate market to the Subject's area in contrast to the concededly different market in Spring Lake and Monmouth Beach, the townships he used. Further, his

adjustment for lot size was based on an unsupported theory called "4:3:2:1" and an unpersuasive reasoning that lowest allocation from this ratio must be applied to his concluded land value, which value development was also not credible. For these reasons, the court finds that plaintiff has not proven the Subject's fair market value by a preponderance of evidence. Therefore, the assessment is affirmed.

FACTS

The Subject is comprised of a 1ot sized 1.93 acres which is located in the east Elberon section of the City. Both experts agreed that this section of the City is upscale and exclusive with affluent, expensive, high-end homes.

The Subject is located in and conforms to the City's R-1 Single Family Residential zone district. The minimum lot area is 17,500 SF. The minimum lot frontage is 100 feet. The Subject has 160 feet of frontage. Adjacent to it is a commercial beach club.

The lot is improved with a two-story French Colonial-style single family home with an oceanfront view. The exterior walls and patios were constructed with limestone reportedly imported from Europe.[1] The front/street entrance to the property (fronting Ocean Avenue) is through a securitized gate. Beyond the gate is a lengthy concrete path, lined with bushes, leading to the house. In front of the house but beyond a patio from the house, is a large fountain.

The Subject enjoys full panoramic views of the ocean, and has a riparian grant that allows direct access to a private beach. There is a concrete ramp leading from the house's rear to the beach. The entrance to the beach is gated. There is a raised patio near the ocean.

[1] Subject was vacant land when purchased in 1992. Improvements were completed in approximately 1996. In 2004, repairs were being made to the exterior limestone which were estimated to cost about $2 million.

The gross living area ("GLA") of the residence is 8,772 square feet ("SF"). It has twelve rooms of which five are bedrooms, four full bathrooms and two half-bathrooms. The interior amenities of the first floor include two half baths, formal dining room, family room, kitchen, informal dining area, living room, solarium, salon with built in bar, and a billiard room. The kitchen has wooden cabinets, granite countertops, two ovens, two dishwashers, and two refrigerators. The pantry also has three additional built-in refrigerators. The second floor consists of five bedrooms, two of which are the master bedroom suites (one of which has an adjacent bath and sitting area), and two full bathrooms. There is a fully finished basement which has two full baths, three bedrooms, laundry room, kitchen, recreational room, and exercise room.

There are extensive wood trims, coffered or highly decorated ceilings, and moldings throughout the house. Portions of the interior including the bathrooms have marble tile flooring while some areas retain carpet or ceramic tile flooring.

The outdoor improvements feature extensive limestone patios in the front and rear, a concrete large in-ground pool to the rear of the house, and two detached two-car garages. Plexiglass walls are around the rear of the property. There is also a raised concrete bulkead. In addition, there are two outdoor pool houses with similar limestone exterior finishes to that of the main residence. One pool house serves as a cabana providing shade and storage. The second pool house serves as a shower building with a basement that houses two air-conditioned dressing rooms, two full baths (only one being functional), laundry closet, and a basement that stores the pool filter and heater. There are limestone patios in the front and rear of the pool house. The south end pool house is 586 SF and the north end pool house is 472 SF.

Plaintiff's expert deemed the Subject's overall condition as "good" with the quality of construction as "excellent." Similarly, the City's expert details the Subject to be of "excellent quality of construction and in good condition," and had a "spectacular appearance."

Both experts agreed that the highest and best use of the Subject to be as its current use. Both used market approach for valuation. The City's expert also used the cost approach.

The experts also agreed that the Elberon Section of the City is a closed community in that most homes are sold in private transactions so that they were rarely, if any, listed on the Multiple Listing Services ("MLS").[2] The one or few brokers who handled such sales did not participate in the MLS and did not divulge any information or details in this regard. Thus, it was difficult to verify details of the sales even if the deeds were publicly available.

VALUATION

(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. Therefore, 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." Id. at 373 (quotations omitted). This burden remains through the trial, thus, even after the taxpayer defeats a motion under R. 4:37-2. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 314-15 (1992).

(B) Value Opinion

Plaintiff's expert testified that he focused his search to large homes of high quality construction similar to the Subject, and with oceanfront or ocean views because he deemed

[2] However, and in contrast to his testimony, Plaintiff's expert's report noted that "most transactions involve conventional financing."

important the real estate and the characteristic of the real estate (including amenities such as beach clubs and upscale/high-end homes), as opposed to the market for the same. Thus, he chose the townships of Spring Lake (7.5 miles away from the Subject) and Monmouth Beach.

He used three comparables in Spring Lake. The sale dates were in 2009 and 2011 and sale prices were $4,700,000 (2011); $5,558,500 (10/2009); and $4,500,000 (04/2009). He used two comparbles in Monmouth Beach, one which sold December 2008 for $5,600,000 (the only oceanfront comparable but still deemed inferior to the Subject which had a superior neighborhood, thus, location); and the other which sold March 2010 for $3,350,000 (which he had mistakenly deemed oceanfront, thus, included an upward adjustment of $250,000 during trial for this factor).

He made adjustments for GLA, ocean view, construction quality, room count, number of bathrooms, basement, garage, and other amenities using cost data from builders of custom homes (priced at $500,000 to $4 million) and Marshall & Swift. He provided an upward adjustment for location for his comparables in Monmouth Beach but not Spring Lake. He made a negative market adjustment of 10% per year until December 31, 2010.

His adjusted sale prices ranged from $5.3 million to $6.6 million. He concluded a value of $6.5 million.

The court does not find Plaintiff's expert value conclusion persuasive. He claimed that there was a paucity of sales in the Elberon Section of the City, and his review of the private sales did not show any occurring for the period relevant to the assessment date. However, there was a November 3, 2011 sale in the Elberon section of the City, proximate in location to the ocean, which sold for $6 million. His claim that he did not know of the sale at the time he prepared his report is not credible because his report is dated February 8, 2013.

He conceded that the neighboring townships of Deal and Allenhurst, which were much closer distance-wise to the City, had a similar real estate residential market to the Elberon section of the City because they had high-end affluent homes, thus, attracted the same pool or market of buyers, but claimed that there were no sales close to the assessment date for his consideration. Yet, the City's expert showed there was a December 8, 2011 sale in Deal,[3] and a sale in Allenhurst which sold May 2013 for $6.7 million.[4]

A consideration of these two sales would have provided a more reasonable/balanced picture of the comparable real estate market given his concession that Spring Lake (which was 7.5 miles away from the Subject) and Monmouth Beach were inferior to the Elberon Section of the City, and did not share the same real estate market as the Subject. He agreed that potential home buyers were "cognizant of the high real estate tax rate in Long Branch, and the tax rates of Spring Lake and Monmouth Beach are significantly lower, so tax savings are significant;" thus, if any one of the comparables was to be placed in the Elberon Section of the City, the buyers may not consider purchasing it. Further, he agreed that none of his comparables in Spring Lake are oceanfront properties with direct access to a private beach and riparian grants like the Subject, and unlike the Subject they all had a street between the homes and the ocean, a public boardwalk, and public parking adjacent to their homes.

Additionally, plaintiff's expert's methodology for arriving at the land value for purposes of providing a site or lot size adjustment is not credible. He explained that he used a "4:3:2:1 theory" whereby he divided a property into four quadrants with each "quadrant of a parcel

[3] That comparable was larger than the Subject at 6.86 acres and 9,196 SF of GLA, and sold for $22.6 million.

[4] Plaintiff's expert cannot credibly claim that that a 2013 sale in a township which is concededly comparable market-wise to the Elberon Section, is unreliable as being beyond the assessment date when he used sales in 2008, 2009 and 2010 as comparables.

[being] broken into 25% increments." He then allocated his concluded land value to each quadrant at ratios of 40%; 30%; 20%; and 10% in descending order. He noted that in non-oceanfront properties, he would use an ascending order by deeming the quadrant closer to the street to merit 40% allocation, and then worked backwards to the rear of the property meriting the lowest allocation. However, as the Subject was an oceanfront property, he opined that the reverse should apply, thus more value should be apportioned to the rear of the property that is closest to the ocean, and least value to the quadrant closest to the street. Consequently, he allocated about 70% - 80% of his concluded land value to the oceanfront quadrant and the quadrant where the Subject's house was sitting, and about 5% -10% for the remaining area which closest to street. He deemed this area as "excess land" because it was least valuable being farthest from the ocean.[5]

To obtain the land value he used an extraction approach whereby he determined the depreciated (at 12%) replacement value of the improvements of his Comparable Sale Five. He used this comparable on grounds it was the only one which had an oceanfront like the Subject. This when subtracted from the comparable's sale price provided an extracted value of land of $2,786,972. He then divided the oceanfront footage of the comparable (115 feet) for a price per-oceanfront-footage of $24,234. Utilizing the "front-along-the-ocean" as the unit of measure, he multiplied this figure to the Subject's oceanfront footage (150 feet) for a lot value of $3,600,000. 5%-10% of this amount provided a range of $180,000 to $360,000. He chose $200,000 as the per-acre price for purposes of lot size adjustments.

[5] The expert likely intended to deem it as "surplus land." Excess land can be sold separately, thus, more valuable, whereas surplus land is not separable and thus is of lesser value. See Appraisal Institute, The Appraisal of Real Estate 214 (13th ed. 2008).

The expert conceded that this "4:3:2:1 theory" was just that, his theory. It was not based on or supported by market information. He maintained that he had utilized this approach before but did not elucidate for which appraisal purpose/assignment this was done. He did not provide any treatises or testimony to prove that this theory or methodology was commonly used by real estate appraisers, thus, acceptable in that field of expertise. The "quadrant" allocation was arbitrary, and there was no explanation why a lot is to be divided into four portions, or that such a division would normally be a consideration in the sale price of a lot. His conclusion that the area closest to the street (the balance 25% of the four quadrants) merited 5%-10% may be superficially reasonable since it is generally less desirable to have homes very close by or abutting the street. However, and presuming his "4:3:2:1 theory" is plausible, access to the street from the home is also necessary, and this vital necessity should be weighed with his conclusion that there is very little value to land closer to the street. Further, his allocation artificially reduces the value of the Subject's lot. This is so when one considers the fact that the allegedly least valuable quadrants in the Subject, here, the considerable distance from the gated street-front to the area where the house sits, provide the Subject with privacy and seclusion, a highly desirable feature in high-end affluent homes (per the credible testimony of the City's expert).

Vacant land is generally purchased for its potential, thus, for its highest and best use. There can be surplus land in this process. However, the expert's method of deeming the area closest to the street as surplus, so that all area in excess of the comparables' lot sizes is deemed to be surplus, meriting a lower per-acre value, is neither persuasive nor credible. This is so where the expert agreed that the comparables' lot sizes were vastly inferior to the Subject; that buyers would pay a premium for the Subject's site size; and that despite his adjustments for site size, the comparables' lots could not support the Subject's improvements. Thus, the expert's

method of dissecting the Subject into four quadrants, giving each quadrant its own respective value, and concluding a lot size adjustment based on 25% of the Subject's site being deemed surplus, thus, entitled to 5% alleged land value of the entire site, is not credible.

Additionally, the court is not convinced that the expert's conclusion of the value of the entire lot is credible. His basis for the same was the 2008 sale of a Monmouth Beach comparable. However, and shown by the City's expert's evidence, there were at least five usable vacant land sales in the City of oceanfront parcels in the R-1 zone. Some of these sales were after, but close to the assessment date, less than a mile from the Subject, with a riparian grant similar to the Subject. The assessor credibly testified that two sales of adjoining lots on the same date were arms-length and separate sales reflecting prices commensurate to oceanfront and non-oceanfront lands, thus, there was no issue of price allocation amongst the parcels, and further that another sale, though included several lots, could not be subdivided. Plaintiff's expert provided no explanation or justification for failing to consider any vacant land sales in the City.

Finally, his extraction method was also not credible. He testified that the 12% depreciation figure for the comparable's improvements was not derived at by comparing the Subject's quality to the comparable but solely on observations of the comparable. The construction quality Comparable Five was "average" with an actual age of 8 years old as compared to the Subject's excellent quality of construction and actual age of 15 years of age. There was no evidence of the cost breakdown or the objective data source he used to arrive at his conclusion.

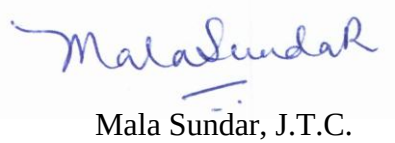
Based on all the evidence in the record, and for the foregoing reasons, the court finds that Plaintiff has failed to persuade the court that the assessment is incorrect.

The court is mindful of its obligation to find true value. However, it cannot do so if the "record is void of sufficient and competent evidence from which the court can base a determination of true value." Greenblatt v. City of Englewood, 26 N.J. Tax 41, 56 (Tax 2010). The court 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).

CONCLUSION

For the foregoing reasons, the court finds that the assessment should be affirmed. An Order and Judgment reflecting this affirmance will accompany this opinion.

Very truly yours,



Mala Sundar, J.T.C.