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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE



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BY FIRST-CLASS AND ELECTRONIC MAIL

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15 Mount Kemble Avenue
Morristown, New Jersey 07960

Re: Larsen v. Township of Wall
Block 837, Lot 11, 2387 Riverside Terrace
Docket No. 011201-2013

Dear Ms. Larsen and Mr. Kool:

This letter constitutes the court's decision following trial on January 15, 2014. Plaintiff contests the local property tax assessment for tax year 2013 on the above captioned property ("Subject"), located in defendant Township of Wall ("Township"). The assessment was:

Land:	\$600,000
Improvements:	<u>\$ 39,600</u>
TOTAL	\$639,600

The Chapter 123 ratio was 65.38% with an upper limit of 75.19% and a lower limit of 55.57%.

*

Plaintiff filed a timely petition to the Monmouth County Board of Taxation (“County Board”) which affirmed the assessment.

Plaintiff provided her testimony which the court found was credible as to the facts. The Township provided its assessor’s limited testimony as to the non-usable category for one of the comparable sales used by Plaintiff. Also in evidence were excerpts of the zoning and tax map indicating the location and size of the Subject and the comparables, photographs taken by Plaintiff, and a sale brochure for Comparable Five.

Plaintiff asserts that the true value of the Subject should be \$700,000 based on either (i) a per square foot (“PSF”) calculation abstracted from the sale of certain comparables as applied to the gross living area (“GLA”) of the Subject as adjusted for location and riparian rights, or (ii) an abstracted land value with adjustments for lot size and location.

The Township asserts that Plaintiff has failed to overcome the presumptive correctness of the assessment because she failed to prove the comparability of the sales to the Subject, and further, because her adjustments lack any basis or objective market-based support. The court agrees. Therefore, the court affirms the County Board’s judgment.

FACTS

A. Subject Description

The Subject comprises of an irregularly shaped lot measuring 2.05± acres. It is improved by a single-family residence built sometime in 1930 with a GLA of 1,467 square feet (“SF”). The photographs show the house has vinyl sidings, window units for air-conditioning, a set of French doors, and tall trees. Plaintiff claimed the residence needed some repairs but was unable to substantiate these assertions.

The house is a riverfront property. The property is split in elevation with the rear sloping downwards towards the Manasquan River. The front of the house is at street level, with a 55-foot setback requirement pursuant to the zoning requirements. The rear of the house faces natural bluffs but is not proximate to the same. Plaintiff claimed that half the Subject (about 1 acre) is at water level, while the other half is at street level.

The Subject does not have any riparian rights. Per Plaintiff's testimony, the waterfront portion is bordered by grass and tall reeds. There is a dock about 4 feet in height. Plaintiff stated that the Subject was located "up river" and thus, farthest from the ocean. She maintained that there are significant maintenance costs and restricted usability of the riverfront portion of the Subject.

B. Comparable Sales Description

Plaintiff used five sales as indicators of the Subject's fair market value. She gathered information from the Monmouth County Board of Taxation's website, publicly available tax records, and the Multiple Listing Services ("MLS"). All sales were located in the Township, two in the same Block as the Subject. All five were waterfront properties, with three having riparian grants. Except for one, the sales occurred within the assessment date of October 1, 2012. Three of the homes were around the same age as the Subject. Plaintiff did not have any knowledge of the interior condition or features of any of the comparables. She did not know or verify the circumstances, details or conditions that may have been attendant to any of the sales. All the photographs of the exteriors of the comparables were taken considerably after the assessment date.

Comparable One is the September 13, 2012 sale of an improved property identified as Block 880, Lot 7, located at 2603 River Road ("Comparable One"), which sold for \$835,000,

after being on the market for 171 days. Located farthest from the Subject (thus “down river”), it was built in 1934, with an irregular non-conforming lot sized 75' x 248' and GLA of 1,808 SF. It has no riparian rights or a dock. Its waterfront area is without reeds or grass, and with a “pebbly” beach. After its sale, the property was rebuilt in 2013, the second story being reduced to frame.

Comparable Two is the February 4, 2013 sale of an improved property identified as Block 880, Lot 21, located at 1607 Bass Point (“Comparable Two”), which sold for \$800,000 after being on the market for 78 days. Built in 1930, it has an irregular non-conforming lot sized 75' x 256' and GLA of 2,289 SF. It has riparian rights on approximately 0.40 acres. The house was demolished about 10 months after its purchase. The waterfront portion, based upon a picture taken September 20, 2013, shows the beach area as without grass or tall reeds.

Comparable Three is the October 1, 2012 sale of an improved property identified as Block 880, Lot 22, located at 1609 Bass Point (“Comparable Three”), which sold for \$1,395,000 after being on the market for 50 days. Built in 1993, thus about 20 years old, it has an irregular non-conforming lot sized 81' x 200' and GLA of 2,896 SF. It has riparian rights on approximately 0.60 acres.

Comparable Four is the May 11, 2012 sale of an improved property identified as Block 837, Lot 1, located at 2397 Rivercrest (“Comparable Four”), which sold for \$400,000 after being on the market for 446 days. Built in 1920, on the same Block as the Subject, the comparable has an irregular non-conforming lot sized 96' x 160' and GLA of 1,146 SF. It has no riparian rights. The waterfront portion, based upon a picture taken September 20, 2013, shows reeds and vegetation abutting the waterside. There is an eight-foot right-of-way easement (providing

public access to the river or park) on the property. Plaintiff agreed that this property was much smaller and less maintained, thus “major adjustments” were required.

Comparable Five is the May 31, 2012 sale of an improved property identified as Block 837, Lot 8, located at 2393 Riverside Terrace (“Comparable Five”), which sold for \$1,200,000 after being on the market for more than 1,184 days. It is the house closest to the Subject. It was built in 1940 but was extensively renovated and expanded sometime 2008. Its lot is regularly shaped and measured about 1.03 acres. It has riparian grant over 0.50 acres. The GLA is 4,803 SF. Plaintiff claimed the house location was as if in a “ravine” and on river-level. The waterfront portion, based upon a picture taken September 20, 2013, shows reeds and vegetation abutting the waterside. The house was marketed as a “magnificent custom built home on the Manasquan River” with “extraordinary features” such as custom woodwork, in-ground pool and Jacuzzi, granite and stainless gourmet kitchen, 3-car garage, and a 125' dock. The home was listed for about \$2 million initially with gradual price reductions. Plaintiff conceded that the sale was listed as non-usable because it was a short sale.

C. Plaintiff's Value Conclusion

Plaintiff proffered two methods of computing the value conclusion of the Subject. Under the first method she calculated the value based upon the \$1,200,000 sale price of Comparable Five, the property closest to the Subject, as adjusted by a PSF value. She arrived at the PSF value by deducting the \$800,000 sale price of Comparable Two from the \$1,395,000 sale price of Comparable Three. She stated that since these were adjacent properties with similar GLA, she was able to extract the value of the improvements by this arithmetic. She thus treated the \$800,000 sale price for Comparable Two as the value of land because that house was completely

demolished after its purchase, lending to her conclusion that the buyer only wanted to purchase the land.

This “abstraction” provided a figure of \$595,000 which was the value she accorded to the improvements of Comparable Three. She divided this by the GLA of Comparable Three (2,896 SF) for a PSF of \$200 (rounded). She maintained that she was conservative in this approach because this reflected the PSF value for a 20-year old home while the Subject was much older. She then multiplied this PSF by the GLA of Comparable Five because this property was closest to the Subject, for a value of \$949,000 (rounded) (4,745 SF¹ x \$205). She then deducted this amount from the sale price of Comparable Five (\$1,200,000) for the value of the “ravine” at \$251,000. She then made adjustments for the Subject’s superior features of split elevation (one acre being river level) of \$350,000, which, she stated provided a result of \$601,000. To this she added half of the \$250,000 “ravine” value, and \$100,000 for one acre of river land, for a final adjusted value of \$700,000 (rounded).

Under the second method, she abstracted the land value of Comparable Two by deducting \$50,000 from the sale price of \$800,000, the deduction being the value she attributed to the structure. To the balance \$750,000, Plaintiff made the following adjustments: +\$150,000 because its lot size was smaller than the Subject, and -\$200,000 because it was located “down river” thus, was superior in location. She explained that her location adjustment was based upon the sale prices of Comparable One (\$835,000) and Comparable Four (\$400,000), the former being “up river” and the latter being “down river,” and the \$400,000 difference evidenced that homes “down river” sold for at least \$400,000 more, which was a “strong indication” that the value attributable to “location” is \$400,000. She thus arrived at a value of \$700,000 for the

¹ This is incorrect because she previously testified that the GLA for Comparable Five was 4,803 SF.

Subject (\$750,000 + \$150,000 -\$200,000). She concluded that either of her methods provided support for the Subject's value being \$700,000.

ANALYSIS

A. Standard of Review

“Original assessments and judgments of county boards of taxation are entitled to a presumption of validity.” MSGW Real Estate Fund, L.L.C. v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). 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

The sales comparable method is appropriate for valuing residential properties, and it is the preferred method when comparable sales are available. See Appraisal Institute, The Appraisal of Real Estate 363 (13th ed. 2008) (“[r]ecent sales of units of comparable size, location and quality are the best indicators of value”). The sales approach is utilized to determine the value of a residential property where, “sufficient recent, reliable transactions” exist to provide a

“supportable indication of market value” through “value patterns or trends in the market.” Id. at 301.

In this connection, the term “market value” is defined as “the most probable price, as of a specified date, in cash, or in terms equivalent to cash, . . . for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.” Id. at 23.

The court finds that Plaintiff properly used the comparable sales approach. She also reasonably used only waterfront properties as comparables. Nonetheless, the comparable sales must be reflective of a competitive market transaction. In this context, her use of Comparable Five is not credible. Plaintiff concedes the same was a short sale and marked as non-usable by the assessor and the Division of Taxation. These type of sales, where the bank forces the sale, is typically considered not to be an arms-length transaction. See 125 Monitor Street LLC v. Jersey City, 21 N.J. Tax 232, 240 (Tax 2004) (“[t]ypically in bank sales, the circumstances surrounding the sale may indicate a depressed price of the property” and a sale “by a bank is a factor regarded as impairing the reliability of the sale price as evidence in determining the property’s value for taxation purposes”), aff’d, 23 N.J. Tax 9 (App. Div. 2005) .

Plaintiff argues that the sale is usable because it was on the market for almost 3 years, which indicates that the seller was not in any rush or duress to sell. However, it is undisputed that when sold, it was a short sale. Plaintiff conceded that she did not verify or know any of the terms and/or conditions/circumstances surrounding the sale. Moreover, “[t]he reasonable marketing time is a function of price, time, use, and anticipated market conditions such as changes in the cost and availability of funds; not an isolated estimate of time alone.” Hull

Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 98 (Tax 1996) (citation omitted). Therefore, the reliability of Plaintiff's Comparable Five as being reflective of a market sale by a seller not under duress or compelled to sell, that would lend competent evidentiary support for valuation purposes, is compromised. The court rejects that sale as unreliable.

Consequently, Plaintiff's conclusion of the Subject's value under her first method, which used the sale price of Comparable Five as the basis for her PSF value conclusion, is also unreliable.² Moreover, PSF amounts based on GLA would be more appropriate where the properties are so similar that the difference in sale price is attributable to the difference in GLA. Here, Plaintiff applied her PSF amount of Comparable Three's GLA, to the GLA of Comparable Five. The photographs of the exteriors of both comparables show that they are dissimilar in several aspects. Comparable Five is in a "ravine" and at river level. However, this is not the case with Comparable Three. Furthermore, the lot sizes and the amount of riparian acreage differed. There was also a substantial difference in the amount of GLA itself. Therefore, her PSF method is unpersuasive.

In addition, although no two properties can be identical, to properly perform sales comparison there must be a substantial similarity between the Subject and the comparable to permit a reasonable comparison between them. Venino v. Borough of Carlstadt, 1 N.J. Tax 172, 175 (Tax 1980), aff'd o.b. per curiam, 4 N.J. Tax 528 (App. Div. 1981). Factors of comparison considered are lot size, GLA, location, features and amenities of the properties.

Plaintiff maintained that since the Subject was a waterfront property, the interior features, amenities or condition were irrelevant, and the crucial elements of comparison were the lot size, location, access/proximity to the river and location ("up river" or "down river"). Her logic was

² So were her adjustments which were not only subjective but did not reconcile mathematically.

that land was of most value in waterfront properties, the structure being of much lesser value. Thus, she candidly admitted that the comparables' improvements were not similar to the Subject.

Even if this position is reasonable, plaintiff's value conclusion under the second method is not persuasive. Since she used the sale price of Comparable Two (\$800,000) as the basis of her calculation, it means she gave this comparable the most weight. But the sale occurred four months after the assessment date. Without an adequate explanation why this time span is irrelevant, the court is hard pressed to accept it as the most reliable indicator of value when there are other sales which occurred within the assessment date as usable data (except Comparable Five as noted above).

Plaintiff explained that she used Comparable Two because that was the best indicator of land value, her opinion being that the property was purchased only for its land since the structures on the property were demolished a year later. While this is technically not an unreasonable position, the fact is that the demolition occurred only in December 2013. Plaintiff agreed that the structures were not dilapidated or uninhabitable. There was no objective evidence that the purchase was for land only. Therefore, her conclusion to this effect is only her subjective opinion. Further, there is no market driven data in support of her attribution of \$50,000 as the value of the structures. There is no analysis of demolition costs in concluding that the land was more valuable without the house on it. Therefore, it is difficult for the court to agree that plaintiff's abstracted value of the land in Comparable Two is \$750,000.

Further, Plaintiff's adjustment of -\$200,000 for location was based on the logic that properties "down river" were more valuable than "up river." However, Comparable One ("down river" which sold for \$835,000) and Comparable Four ("up river" which sold for \$400,000), were dissimilar in several aspects. Comparable Four had a smaller lot size, lesser GLA, and was

older than Comparable One. Plus it had an eight-foot right-of-way easement (providing public access to the river or park) on the property unlike Comparable One. The court is not persuaded that Comparable One sold for more than Comparable Four solely due to location. Therefore, Plaintiff's calculation of the location adjustment is not reliable. This is so even if she only used half the amount because there is no analysis of the value attributable to riparian rights or easements.

For all of the above reasons, the court finds that the evidence presented here does not overcome the presumptive correctness of the County Board's judgment.

CONCLUSION

The County Board judgment is affirmed. A Judgment reflecting this affirmance will be entered simultaneously.

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.