NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge

R.J. Hughes Justice Complex
P.O. Box 975
Trenton, New Jersey 08625-0975
(609) 292-8108 Fax: (609) 984-0805

November 10, 2014

Michael A. Paff, Esq.
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive, Suite 900 Box 10
Woodbridge, New Jersey 07095-0958

William T. Rogers, III, Esq.
Skoloff & Wolfe, PC
293 Eisenhower Parkway
Livingston, New Jersey 07039

Re: John P. Coughlan and K. A. Redfern v. City of Summit
Docket No. 011571-2011

John Coughlan v. City of Summit
Docket No. 013248-2012

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matters. Plaintiffs challenge the assessments on their single-family residence in the City of Summit for tax years 2011 and 2012. For the reasons explained more fully below, the assessments are affirmed.

*

I. Findings of Fact and Procedural History

This letter opinion sets forth the court's findings of fact and conclusions of law after trial. R. 1:7-4.

Plaintiffs John P. Coughlan and Karen A. Redfern are the owners of a single-family home in Summit. The property is designated in the records of the municipality as Block 1902, Lot 11 and is known as 11 Sherman Avenue. For tax year 2011, the property was assessed as follows:

Land	$216,800
Improvements	$309,200
Total	$526,000

The Chapter 123 average ratio for the municipality for tax year 2011 is 45.94. When the ratio is applied to the assessment, the implied equalized value of the subject property for tax year 2011 is $1,144,972.

Plaintiffs filed a petition of appeal with the Union County Board of Taxation challenging the assessment. On June 14, 2011, the county board issued a Judgment affirming the assessment.

On July 12, 2011, plaintiffs filed a Complaint in this court challenging the Judgment of the county board.

The assessment on the property remained the same for tax year 2012. The Chapter 123 average ratio for the municipality for tax year 2012 is 44.85. When the ratio is applied to the assessment, the implied equalized value of the subject property for tax year 2012 is $1,172,798.

Plaintiffs filed a petition of appeal with the Union County Board of Taxation challenging the assessment. On July 2, 2012, the county board issued a Judgment affirming the assessment.

On August 16, 2012, plaintiffs filed a Complaint in this court challenging the Judgment of the county board.[1]

The two appeals were tried together.

The subject property is a colonial-style, single-family home constructed in approximately 1925. The home, which is situated on .26 acres, has four bedrooms and three and one half bathrooms and is in good condition. The residence has a total of eight rooms, as well as a partially finished basement with a recreation room, lavatory and laundry room. One bedroom and one bathroom are located on the third floor of the home. The home has one fireplace, a two-car garage and a kitchen that was upgraded in 2004. Plaintiffs' residence is in a desirable residential neighborhood in an upscale community. A commuter rail station in downtown Summit with a direct connection to Manhattan is a significant positive attribute of the community. Access to the station contributes to the value of residential property in Summit. The subject property is less than a mile from the Summit train station.

The record contains conflicting evidence with respect to the size of the living space at the subject property. Both parties relied on the testimony of expert appraisal witnesses. Plaintiffs' expert offered the opinion that the home has 2,396 square feet of living space. He based this opinion on his examination of the tax assessor's records and his own exterior measurement of the home. Although plaintiffs' expert made a sketch of the home, including the third floor living area, he did not include measurements of the rooms in his drawing. Plaintiffs' expert also did not review municipal permits issued for expansions and renovations at the home.

The municipality's expert, who serves as the deputy tax assessor for Summit, offered the opinion that the home has 2,655 square feet of living space. He based his opinion on his

[1] The tax year 2012 Complaint names only John Coughlan as a plaintiff.

inspection and measurement of the home. The municipality's expert opined that the difference in the living space measurements offered by the experts is attributable to the fact that he included the third-floor living space in his calculation while the taxpayers' expert did not. The court accepts this explanation for the different measurements as credible and adopts the living space figure offered by the municipality's expert. Photographs admitted into evidence as part of the experts' reports clearly establishes that the third floor of the home is habitable living space used as a bedroom and bathroom which should have been included in experts' calculations.

Plaintiffs' expert offered the opinion that the true market value of the subject property on October 1, 2010, the valuation date for tax year 2011, was $900,000. He also offered the opinion that the true market value of the subject property on October 1, 2011, the valuation date for tax year 2012, was $910,000. The municipality's expert offered the opinion that the true market value of the subject property on October 1, 2010 was $1,160,000 and on October 1, 2011 was $1,220,000.

II. Conclusions of Law

The court's analysis begins with the well-established principle that "[o]riginal assessments and judgments of county boards of taxation are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

> The presumption attaches to the quantum of the tax assessment. Based on this presumption the appealing taxpayer has the burden of proving that the assessment is erroneous. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is exemplified by the nature of the evidence that is

> required to overcome it. That evidence must be "definite, positive and certain in quality and quantity to overcome the presumption."

Ibid. (quoting Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985)(citations omitted)).

The presumption of correctness arises from the view "that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Pantasote, supra, 100 N.J. at 413 (citing Powder Mill, I Assocs. v. Township of Hamilton, 3 N.J. Tax 439 (Tax 1981)); see also Byram Twp. v. Western World, Inc., 111 N.J. 222 (1988). The presumption remains "in place even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity." Transcontinental Gas Pipe Line Corp. v. Township of Bernards, 111 N.J. 507, 517 (1988)(citation omitted).

"In the absence of a R. 4:37-2(b) motion . . . the presumption of validity remains in the case through the close of all proofs." MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 377. In making the determination of whether the presumption has been overcome, the court should weigh and analyze the evidence "as if a motion for judgment at the close of all the evidence had been made pursuant to R. 4:40-1 (whether or not the defendant or plaintiff actually so moves), employing the evidentiary standard applicable to such a motion." Ibid. The court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence. Id. at 376 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 535 (1995)). In order to overcome the presumption, the evidence "must be 'sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.'" West Colonial Enters, LLC v.

City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003)(quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff'd, 18 N.J. Tax 658 (App. Div.), certif. denied, 165 N.J. 488 (2000)).

Only after the presumption is overcome with sufficient evidence at the close of trial must the court "appraise the testimony, make a determination of true value and fix the assessment." Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982)(citations omitted). If the court determines that sufficient evidence to overcome the presumption has not been produced, the assessment shall be affirmed and the court need not proceed to making an independent determination of value. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992); Global Terminal & Container Serv. v. City of Jersey City, 15 N.J. Tax 698, 703-704 (App. Div. 1996).

According all favorable inferences to plaintiffs' evidence, as is required by law, the court concludes that plaintiffs raised a debatable question regarding the correctness of the assessments on the subject property. Plaintiffs' expert relied on five comparable sales for each tax year, to which the expert applied various adjustments, to offer an opinion that the subject property had a true market value on each of the valuation dates more than $200,000 below the implied equalized value of the assessments on the subject property. The expert's opinion was based on an analysis typical of that used by appraisers and courts to determine the true market value of residential real property. When the assessment for each tax year is divided by the value opinion offered by plaintiffs' expert for that tax year, the resulting ratio exceeds the upper limit of the common level range for that year. Thus, if the opinions of plaintiffs' expert were accepted by this court, plaintiffs would be entitled to relief. The court concludes, therefore, that the record contains

evidence that is sufficiently definite, positive and certain that the assessments on the subject property exceeds its true market value as of October 1, 2010 and October 1, 2011.

This determination alone does not end the court's inquiry. Having found that the presumption of correctness was overcome, it is the court's obligation to determine the true market value of the subject property on the relevant valuation dates.

The comparable sales 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); Appraisal Institute, The Appraisal of Real Estate, 419 (12th ed 2001)(the comparable sales approach "usually provides the primary indication of market value in appraisals of properties that are not usually purchased for their income-producing characteristics."). This method of valuation has been defined as "[a] set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sales prices of the comparables based on the elements of comparison." Id. at 417. Both experts took this approach to determine the value of the subject property. The court finds that this approach is the best method for determining the true market value of plaintiffs' residence. A purchaser in the marketplace on October 1, 2010 and October 1, 2011 would determine the value of the subject property through the use of comparable sales.

For each tax year, plaintiffs' expert relied on five comparable sales of single-family residences in Summit within a mile of the subject property. For tax year 2011, the sales prices of plaintiffs' comparable sales ranged from $1,037,000 to $780,000. After adjustments, the adjusted sales prices of plaintiffs' comparable sales ranged from $1,017,000 to $790,000. For tax year 2012, the sales prices of plaintiffs' comparable sales ranged from $975,000 to $800,000.

After adjustments, the adjusted sales prices of plaintiffs' comparable sales ranged from $985,000 to $810,000.

The opinion of plaintiffs' expert suffered from a flaw that is fatal to its credibility. The expert did not make an adjustment to the prices of his comparable sales for living space. As noted above, the subject property has 2,655 square feet of living space. The comparable sales on which plaintiffs' expert relied for tax year 2011 had living space ranging from 2,266 square feet to 2,962 square feet. The comparable sales on which he relied for tax year 2012 had living space ranging from 2,181 square feet to 2,775 square feet. Plaintiffs' expert did not make a per-square-foot adjustment for these differences. He, instead, compared the number of rooms in each comparable sale to the number of rooms in the subject and made an adjustment $25,000 per room to account for differences. This approach lacks credibility for two reasons.

First, it is well recognized that the amount of living space in a residential property is one of the key characteristics that drive sales price. After all, the purpose of residential property is to provide living space to the occupants. The amount of that space is essential to the purchaser's determination of whether the number of people intended to live in the home can do so comfortably. So too will the purchaser be able to determine from the amount of living space what will be necessary to furnish the home. Room count, without consideration of the size of the rooms, does not have the same direct tie to the property's utility and value. Apparently, plaintiffs' expert included in his count all rooms – kitchen, dining room, living room, bedrooms – regardless of their size or utility. Yet, he made the same $25,000 adjustment "per room" whether it be a large living room or a small third-floor bedroom as is present at the subject.

Second, plaintiffs' expert offered no market data to support the $25,000 per room adjustment he applied. The expert's reports, which were admitted into evidence, explain the

basis for the adjustment as follows: "We researched home sales within the City of Summit and made adjustments on a per room basis rather than on a per square foot basis." No further explanation is stated. Nor did the expert's testimony illuminate the reasoning for his approach.

It is well established that an expert's bare conclusions, unsupported by factual evidence or other data, are inadmissible net opinions. State v. Townsend, 186 N.J. 473, 494-95 (2006). An expert must give the "whys and wherefores" of her opinion, rather than a mere conclusion. Rosenberg v. Tovarath, 352 N.J. Super. 385, 401 (App. Div. 2002); Greenblatt v. City of Englewood, 26 N.J. Tax 41, 54-55 (Tax 2010). An expert's opinion "depends upon the facts and reasoning which form the basis of the opinion. Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 448 (Tax 1980).

The court is mindful of the Supreme Court's directive in Glenn Wall Assocs. v. Township of Teaneck, 99 N.J. 265, 280 (1985), to "be cognizant of expense incurred by litigants" in prosecuting tax appeals and aware that sometimes the factual circumstances of a case, while unusual, require an appropriate and pragmatic application of the existing and relevant statutory scheme. See also Jaydor Corp. v. Township of Millburn, 18 N.J. Tax 655, 657-658 (App. Div. 2000). There is nothing unusual here that would excuse an expert from using the commonly applied per-square-foot adjustment for living space and from providing market data to support a proposed alternative $25,000 per-room adjustment.[2]

[2] The court notes that plaintiffs' expert listed the subject property as having 2,396 square feet of living space, a figure the court determined to be less credible that the square feet figure offered by the municipality's expert. The court also notes that plaintiffs' expert's comparable sale at 57 Hobart Avenue was listed by him as having 2,781 square feet of living space. The assessor's property record card for that home, which was introduced into evidence, indicates that that house has 3,261 square feet of living space. The expert did not explain this discrepancy.

Other factors also undermined the credibility of the opinion of plaintiffs' expert. Two of the sales on which the expert relied were marked by the municipal assessor as non-usable for purposes of the Director, Division of Taxation's ratio study, one because it involved a short sale. Plaintiffs' expert testified that he spoke with the brokers involved in those transactions and obtained their opinions that the sales reflected market value. On cross-examination, however, plaintiffs' expert admitted that he did not ask the brokers if the transactions involved unusual financing or whether the sellers were unusually motivated. While a non-usable designation by the assessor is not a per se bar to use of a sale as credible evidence of value, the court is not convinced that plaintiffs' expert made a sufficient investigation to opine credibly that the two sales are reliable evidence of value.

Finally, plaintiffs' expert was decidedly uncertain of the number and location of commuter rail stations in Summit. It is readily apparent to the court that a home's proximity to the train station, including whether residents can walk to the station, is a characteristic that impacts value. Plaintiffs' expert provided no convincing testimony on this point with respect to his comparable sales. In light of these conclusions, the court gives no weight to the opinions of value offered by plaintiffs' experts.

The municipality's expert relied on four comparable sales for tax year 2011 and five comparable sales for tax year 2012. All of the comparable sales on which he relied are single-family homes in Summit in close proximity to the subject property.

The expert made per-square-foot adjustments to the sales prices of the comparable sales for differences in living space. He made those adjustments at a rate of $100 per square foot. He reached that figure by considering market data indicating residential sales in Summit generally in the range of $400 per square foot, the estimated values placed on permits in Summit for new

construction, additions and renovations, paired sales analysis and conversations with market participants.

Defendant's expert, who also serves as the deputy tax assessor for the municipality, had a clear understanding of the relative proximity of the subject property and each of his comparable sales to the commuter rail station and downtown shopping. He also examined the construction permits issued for the subject property to determine the age and quality of its amenities. His analysis of the comparable sales included identification of the age and quality of amenities at each of the comparable sales to ensure that those homes were equivalent to the subject.

Apart from the living space adjustments, the comparable sales upon which defendant's expert relied required few adjustments. The homes were sufficiently similar in effective age, amenities, location and quality to eliminate the need for significant adjustments. The one exception was the comparable sale at 2 Sherman Avenue, used by the municipality's expert for tax year 2012. Although on the same street as the subject property, the comparable sale's price was adjusted upward by $147,800 for location. According to the expert, the comparable sale suffers from its proximity to a school and gymnasium which generate heavy traffic. The court will discount this comparable.[3]

The court concludes that the municipality's expert offered credible opinions of the true market value of the subject property. The expert provided a thorough analysis of homes which

[3] The court notes that one comparable sale on which defendant's expert relied, 11 De Bary Place, was marked by the assessor as non-usable for purposes of the Director's annual ratio study. The non-usable designation selected by the assessor was "7," which applies to "[s]ales of property substantially improved subsequent to assessment and prior to the sale thereof." N.J.A.C. 18:12-1.1(a)(7). This code, while relevant to the sales ratio study, does not have an effect on the credibility of the sale as evidence of true market value. Post assessment improvements to the property would likely result in a significant disparity between the assessment and the sales price. Those improvements, however, would not undermine the credibility of the sale as evidence of true market value.

were in many respect similar to the subject property. He demonstrated a superior knowledge of the market, the municipality and the characteristics of both the subject property and the comparable sales. The court adopts both opinions of value as of both valuation dates.[4]

The court concludes, therefore, that the true market value of the subject property on October 1, 2010 was $1,160,000 and on October 1, 2011 was $1,220,000.

Pursuant to N.J.S.A. 54:51A-6a, commonly known as Chapter 123, in a non-revaluation year an assessment must be reduced when the ratio of the assessed value of the property to its true value exceeds the upper limit of the common level range. The common level range is defined by N.J.S.A. 54:1-35a(b) as "that range which is plus or minus 15% of the average ratio" for the municipality in which the subject property is located.

The true value determined above must, therefore, be compared to the average ratio for Summit City for tax year 2011. The formula for determining the subject property's ratio is:

Assessment ÷ True Value = Ratio

Here, that equation is represented as follows:

$526,000 ÷ $1,160,000 = .4534

The Chapter 123 average ratio for Summit City for tax year 2011 is 45.94%, with an upper limit of 52.83% and a lower limit of 39.05%. Here, the ratio of the subject property's assessment to its true market value is 45.34 %, within the corridor created by the upper limit and lower limit for Summit City for tax year 2011. Because the ratio does not exceed the upper limit,

[4] Although the court discounts the comparable sale at 2 Sherman Avenue for tax year 2012, removal of that sale from consideration does not undermine the expert's opinion of true market value for that tax year. The adjusted sales price of 2 Sherman Avenue fell squarely in the center of the five comparable sales, with two higher adjusted sales prices and two lower.

assessment relief is not warranted. See N.J.S.A. 54:51A-6c. The assessment will, therefore, be affirmed.

For tax year 2012, the ratio equation is represented as follows:

$526,000 ÷ $1,220,000 = .4311

The Chapter 123 average ratio for Summit City for tax year 2012 is 44.85%, with an upper limit of 51.58% and a lower limit of 38.12%. Here, the ratio of the subject property's assessment to its true market value is 43.11 %, within the corridor created by the upper limit and lower limit for Summit City for tax year 2012. Because the ratio does not exceed the upper limit, assessment relief is not warranted. See N.J.S.A. 54:51A-6c. The assessment will, therefore, be affirmed.

Judgments will be entered accordingly.

Very truly yours,

Patrick DeAlmeida, P.J.T.C.