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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge



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Re: Bruce M. Brown and Elaine M. Brown v.
Borough of Bay Head
Docket No. 012801-2010

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matter. Plaintiffs challenge the assessment on their single-family residence in Bay Head Borough for tax year 2010. For the reasons explained more fully below, the assessment is reduced.

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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 Bruce M. Brown and Elaine M. Brown are the owners of a single-family home in defendant Bay Head Borough. The property is designated in the records of the municipality as Block 61, Lot 9 and is known as 526 East Avenue. For tax year 2010 the property was assessed as follows:

Land	\$2,980,000
Improvements	<u>\$ 989,000</u>
Total	\$3,969,000

Plaintiffs filed a petition of appeal with the Ocean County Board of Taxation challenging the assessment. On June 10, 2010, the county board issued a Judgment lowering the assessment as follows:

Land	\$2,800,000
Improvements	<u>\$ 700,000</u>
Total	\$3,500,000

The ratio for Bay Head Borough for tax year 2010 exceeds 100%.

On July 8, 2010, plaintiffs filed a Complaint in this court challenging the Judgment of the county board.

The subject property is a two-and-a-half story, well-maintained, high-quality residence constructed in 1992 one block from the Atlantic Ocean in a desirable seaside community. The home has approximately 5,000 square feet of living space with a total of thirteen rooms, including five bedrooms and four and a half bathrooms. The residence has a two-car garage, a small, in-ground wading pool, multiple decks, landscaping, large porches and sits on a crawl space. The home has partial Atlantic Ocean views from the third floor and is in good condition.

The house is situated on land measuring 130' x 100'. In the records of the municipality the subject parcel is listed as two lots, each large enough to support a single-family home under the controlling zoning ordinance. The subject home, however, would not fit on only one of the lots. Both parcels are necessary to support plaintiffs' large home. Although common ownership would allow the two lots to be merged by deed, the two parcels remain separate.

At trial, both parties presented appraisal experts. Plaintiffs' expert relied on four comparable sales of single-family homes, only two of which are in Bay Head Borough. Two of plaintiffs' expert's comparable sales are in Mantoloking Borough, a neighboring municipality which he considers to be comparable to Bay Head. In addition, the expert relied on two listings of single-family homes, one in Bay Head and one in Mantoloking. The expert acknowledged that the subject property is larger than three of the four comparable sales. After making various adjustments to the comparable sales, and after giving some weight to the two listings, plaintiffs' expert offered the opinion that the subject property had a true market value of \$2,700,000 as of October 1, 2009, the relevant valuation date.

The municipality relied on the borough tax assessor as its expert witness. That expert relied on four comparable sales of homes in Bay Head. Two of the assessor's comparable sales are the two Bay Head sales on which plaintiffs' expert relied. The assessor did not rely on any sales from Mantoloking, which the assessor considers to have lower real estate values than does Bay Head. After making various adjustments, the assessor offered the opinion that the subject property had a true market value of \$4,000,000 as of October 1, 2009.

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 assessment on the subject property. Plaintiffs’ expert relied on four comparable sales, to which the expert applied various adjustments, as well as two listings, to offer an opinion that the subject property had a true market value of \$2,700,000 on the relevant valuation date. This figure is \$800,000 less than the value reflected in the assessment. The expert’s opinion was based on an analysis

typical of that used by appraisers and courts to determine the true market value of real property. The court concludes, therefore, that the record contains evidence that is sufficiently definite, positive and certain that the assessment on the subject property exceeds its true market value as of October 1, 2009.

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 valuation date.

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, 2009 would determine the value of the subject property through the use of comparable sales.

The court's attention is immediately focused on the fact that there are two comparable sales on which both experts relied at trial: the sale of 844 East Avenue in Bay Head and the sale of 220 East Avenue in Bay Head. These residences, which are on the same street as the subject

property and are the same distance from the Atlantic Ocean, a key factor in a seaside community, are the most credible evidence of value in the record. The homes are sufficiently similar in age, condition and appearance to be credible evidence of the value of the subject property.

The experts agree that the home at 844 East Avenue sold for \$3,000,000 on October 20, 2008. The 3,673-square-foot home was constructed in 2004 and has seven bedrooms and five bathrooms. Both experts made a positive adjustment of approximately \$135,500 to account for the subject's larger living area. In addition, both experts made a positive \$30,000 adjustment to account for the subject's larger garage. Plaintiffs' expert made further negative adjustments of \$112,500 for time, \$5,000 for room count and \$15,000 for the comparable sale's in-ground pool. Defendant's expert made further negative adjustments of \$3,000 for room count, \$20,000 for the pool, \$5,000 for a whirlpool tub, \$1,380 for a deck and \$50,000 for an elevator at the comparable sale, along with a positive adjustment of \$8,600 for an open porch and \$5,000 for a fireplace at the subject. These differences in adjustments do not amount to a significant difference of opinion between the experts. The experts' opinions departed when it came to consideration of lot size.

Plaintiffs' expert made a \$160,000 positive adjustment to account for the subject property's larger lot. Defendant's expert made a \$1,600,000 positive adjustment for this category. The drastic difference reflects the experts' varying views with respect to the significance of the two lots on which the subject residence sits. Plaintiffs' expert is of the opinion that oversized lot constitutes excess land, the value of which is marginal. The municipality's expert is of the opinion that the subject property is comprised of two building lots, a fact that adds significantly to the value of the subject property. According to the assessor, an arms' length negotiation would result in a significant sum being paid for the ability of the

property owner to remove the residence currently on the property and construct two homes within one block of the Atlantic Ocean in a desirable shore community. The court concludes that the opinion of plaintiffs' expert on this point is more credible.

“Excess land is defined in an authoritative appraisal text as surplus land not needed to support the existing improvements.” M.I Holdings, Inc. v. City of Jersey City, 12 N.J. Tax 129, 137 (Tax 1991)(citing American Institute of Real Estate Appraisers, The Appraisal of Real Estate, (9th ed 1987) at 200). “Surplus land is not needed to support the existing improvement and typically cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may contribute a minimal value.” International Flavors & Fragrances, Inc. v. Borough of Union Beach, 21 N.J. Tax 403, 431 (Tax 2004)(quoting Appraisal Institute, The Appraisal of Real Estate (12th ed 2001) at 199); accord Schimpf v. Township of Little Egg Harbor, 14 N.J. Tax 338, 343 (Tax 1994). “If excess land is marketable independent of the lot’s primary use, or if the excess land contributes a development potential to the lot as a whole, its value should be ascertained and added to the value of the lot as currently used.” United Jersey Bank v. Borough of Lincoln Park, 11 N.J. Tax 549, 557 (Tax 1991)(citing The Appraisal of Real Estate (9th ed), supra, at 200-201).

It is undisputed that plaintiffs' residence is too large to be constructed on a single building lot. Both building lots that comprise the land at the subject property are necessary to support the structure. The entire parcel, therefore, is necessary for the existing use of the property. In addition, the municipality offered no evidence to support the conclusion that the highest and best use of the subject property is for the demolition of the existing residence to permit the construction of two homes. While such a scenario might apply to a seaside property on which existed an old, deteriorated or obsolete structure, by all accounts, the subject property is

a luxury home in good condition featuring high-quality amenities. In light of these observations, the court accepts the more modest land-size adjustment offered by plaintiffs' expert.

Plaintiffs' expert offered the opinion that the adjusted sales price of 844 East Avenue is \$3,192,800. The court will accept this adjusted sales price as more credible than the \$4,599,720 adjusted sales price offered by the tax assessor.

Both experts also relied on the sale of 220 East Avenue in Bay Head. That residence sold on November 6, 2009 for \$2,125,000. The experts disagreed with respect to the size of this residence. Plaintiffs' expert reported that the residence has five bedrooms and five and one half bathrooms in 4,196 square feet of living space. The assessor describes the property as having three bedrooms and five and one half bathrooms in 3,616 square feet of living space. The record does not contain an explanation for the differing figures. Both experts offered positive room count and size adjustments: plaintiffs' expert offered a positive adjustment of \$73,200; the assessor offered a positive adjustment of \$131,200. The \$58,000 difference in the adjustments is not significant. The court will accept the adjustment offered by plaintiffs' expert. After application of his adjustment, plaintiffs' experts offered an adjusted sales price of \$2,332,200 for 220 East Avenue. The court finds this adjusted sales price credible.

The court will not rely on plaintiffs' two remaining comparable sales. Those properties are in Mantoloking. The assessor offered credible testimony that real property in Bay Head has a greater true market value than does real property in Mantoloking. The municipalities have different characters, particularly in light of the fact that Bay Head has an established downtown area. Plaintiffs' expert did not offer sufficient credible evidence to support the opinion that an adjustment was not necessary to account for the differences in the municipalities. In addition, one of the sales in Mantoloking is located on the area's major thoroughfare, Route 35. Nor will

the court rely on the two listings offered by plaintiffs' expert. As a general rule, the court relies on arms' length sales, not listings to determine true market value.

The two remaining comparable sales in the trial record are of homes in Bay Head: the sale of 344 East Avenue and the sale of 646 East Avenue. The court will not rely on these sales. The home at 344 East Avenue was constructed in 1890; the home at 646 East Avenue was constructed in 1950. Both residences are considerably smaller than the subject, one less than half its size. In addition, 344 East Avenue is adjacent to a hotel and restaurant. These factors render these sales less credible than the two other Bay Head sales on which both experts relied.

The two credible adjusted sales prices in the record – \$3,192,800 and \$2,332,200 – vary significantly. In light of the size of the subject and its undisputed high quality, the court will give greater weight to the higher adjusted sales price. The court concludes that the true market value of the subject property on October 1, 2009 was \$3,000,000.

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 Bay Head Borough for tax year 2010. The formula for determining the subject property's ratio is:

$$\text{Assessment} \div \text{True Value} = \text{Ratio}$$

Here, that equation is represented as follows:

$$\$3,500,000 \div \$3,000,000 = 1.67$$

The chapter 123 average ratio for Bay Head Borough exceeds 100%. Where both the average ratio for the municipality and the ratio of the assessed value of the property to its true value exceed 100%, the court will enter Judgment revising the assessment at 100% of the subject property's true market value. N.J.S.A. 54:51A-6c.

The court will enter Judgment setting the tax year 2010 assessment on the subject property as follows:

Land	\$2,300,000
Improvements	<u>\$ 700,000</u>
Total	\$3,000,000

Very truly yours,


Patrick DeAlmeida, P.J.T.C.