

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY



Joshua D. Novin
Judge

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COMMITTEE ON OPINIONS

March 10, 2015

Ms. Renate Gravers
1561 Cooper Road
Scotch Plains, New Jersey 07076

Catherine M. DeAppolonio, Esq.
Palumbo, Renaud & DeAppolonio, LLC
190 North Avenue East
Cranford, New Jersey 07016

Re: Renate Gravers v. Scotch Plains Township
Docket No. 015152-2013

Dear Ms. Gravers and Ms. DeAppolonio:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the 2013 year tax assessment on plaintiff's single-family residence.

For the reasons stated more fully below, the court affirms the 2013 year tax assessment and dismisses plaintiff's complaint.

I. Procedural History and Factual Findings

Pursuant to R. 1:7-4, the court makes the following findings of fact and conclusions of law in this matter.

Renate Gravers ("plaintiff") is the owner of the single-family home located at 1561 Cooper Road, in the Township of Scotch Plains, County of Union and State of New Jersey. The

property is identified on the tax map of the Township of Scotch Plains as Block 12001, Lot 27 (the “subject property”). For the 2013 tax year, the subject property was assessed as follows:

Land:	55,100
<u>Improvements:</u>	<u>84,900</u>
Total	140,000

The average ratio of assessed to true value, commonly referred to as the Chapter 123 ratio, for the Township of Scotch Plains (“defendant”) for the 2013 tax year is 25.68%. See N.J.S.A. 54:1-35a(a). When the average ratio is applied to the assessment, the implied equalized value of the subject property for the 2013 tax year is \$545,171.33.

Plaintiff filed a petition of appeal with the Union County Board of Taxation challenging the 2013 tax year assessment on the subject property. On July 31, 2013, judgment was entered by the Union County Board of Taxation dismissing plaintiff’s appeal without prejudice, with the notation that the assessment was “within range N.J.S.A. 54:3-22.”

On October 3, 2013, plaintiff filed a timely complaint with the Tax Court contesting the determination of the county board of taxation. The defendant did not file a counterclaim. The matter was tried to conclusion on February 25, 2015. Two witnesses offered testimony at the time of trial, plaintiff, and a State of New Jersey licensed real estate broker, who was called by plaintiff as an expert. Defendant’s counsel’s voir dire of plaintiff’s proposed expert revealed the following knowledge, skill and expertise: (i) since 1968 he has, without interruption, maintained a license with the State of New Jersey as a real estate broker (see N.J.S.A. 45:15-1); and (ii) for more than 30 years he has maintained a principal place of business in Union County, and (iii) during his 46 year career, he has represented thousands of individuals in the purchase of single-family homes, or in offering, marketing and presenting single-family homes for sale.

Accordingly, over the objection of defendant’s counsel, and for the reasons set forth on the

record, the court accepted plaintiff's witness as an expert in the area of the sale, marketing and valuation of single-family homes.

The subject property is a colonial-style, single-family home, situate on 1.08 acres. The home consists of a total of eight rooms, three bedrooms and two full bathrooms. The subject property is located appurtenant to a right of way containing high tension wires affixed to stanchions. The stanchions also contain a number of cellular communication antenna. Plaintiff's expert estimated that plaintiff's home is a distance of approximately 100 feet from the right of way. Although plaintiff's expert inspected the subject property, he did not measure the improvements on the subject property. However, based on his years of experience as a licensed real estate broker viewing similar single-family homes, the expert opined that the gross living area of the subject property was approximately 2,000 square feet. The expert testified that the interior of the subject property had not been improved since approximately 1978, when plaintiff purchased it. No photographs of the interior or exterior of the subject property were presented to the court or introduced into evidence at trial. Significantly, the court was not furnished with any details regarding the age of plaintiff's home, the composition and quality of the improvements, the source of fuel service furnished to the subject property, whether the subject property is serviced by private well or public water, and the presence or absence of a garage and/or a basement on the subject property.

Plaintiff's expert employed the comparable sales approach to reach an opinion of the true market value of the subject property as of the October 1, 2012 valuation date. Plaintiff's expert testified that he personally inspected the interior of each comparable sale referenced in his report.

As of the October 1, 2012 valuation date, plaintiff's expert opined the true market value of the subject property was "in the range of \$325,000." At the conclusion of plaintiff's case, defendant moved to dismiss plaintiff's complaint under R. 4:37-2(b). The court denied defendant's motion for the reasons set forth on the record.

II. Conclusions of Law

The court's analysis begins with the well-established standard 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). 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." Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985)(citing Riverview Gardens v. North Arlington Borough, 9 N.J. 167, 174 (1952)). The "presumption is not simply an evidentiary presumption serving only as a mechanism to allocate the burden of proof. It is, rather, a construct that expresses the view that in tax matters, it is to be presumed that governmental authority has been exercised correctly and in accordance with law." MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 374 (Tax 1998)(citing Powder Mill, I Assocs. v. Hamilton Township, 3 N.J. Tax 439 (Tax 1981)). "The presumption of correctness...stands, until sufficient competent evidence to the contrary is adduced." Little Egg Harbor Township v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998). A taxpayer can only rebut the presumption by introducing "cogent evidence" of true value. That is, evidence "definite, positive and certain in quality and quantity to overcome the presumption." Aetna Life Ins. Co. v. Newark, 10 N.J. 99, 105 (1952). Therefore, at the close of plaintiffs' proofs, the court must be presented with

evidence which raises a “debatable question as to the validity of the assessment.” MSGW Real Estate Fund, LLC, *supra*, 18 N.J. Tax at 376 (Tax 1998).

The court, in evaluating whether the evidence presented meets the “cogent evidence” standard, “must accept such evidence as true and accord the plaintiff all legitimate inferences which can be deduced from the evidence.” *Id.* at 376 (citing Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995)). However, the evidence presented, when viewed under the Brill standard “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. 2004), *certif. denied*, 165 N.J. 488 (2000)). “Only after the presumption is overcome with sufficient evidence... must the court ‘appraise the testimony, make a determination of true value and fix the assessment.’” Greenblatt v. Englewood City, 26 N.J. Tax 41, 52 (Tax 2011)(quoting Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982)). If the court concludes that evidence sufficient to overcome the presumption of validity has not been presented, judgment must be entered affirming the assessment. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992).

Here, the court concluded plaintiff produced evidence sufficient to overcome the presumption of validity attached to the original assessment and the county board judgment. Accepting such evidence as true, and according plaintiff all legitimate inferences which can be deduced therefrom, a debatable question existed as to the correctness of the 2013 tax year assessment on the subject property. Plaintiff’s expert relied on the sales of three single-family homes in the taxing district, which, in the expert’s opinion, were comparable to the subject

property. Although the expert was admittedly not an appraiser, the expert had amassed more than 46 years of experience in the sale, presentation and marketing of single-family homes in Union County. Moreover, during 7 years of his 46 year career, the expert was also a New Jersey licensed home builder. The expert's opinion of value was based on a comparable sales analysis, which is a typical approach to valuing single-family homes. Thus, if the opinions of plaintiff's expert were accepted by the court, plaintiff would be entitled to the relief sought.

However, concluding that the presumption of validity which attaches to the tax assessment has been overcome, does not equate to a finding by the court that a property tax assessment is erroneous. Once the presumption has been overcome, "the court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co., supra, 127 N.J. at 312. The court must be mindful that "although there may have been enough evidence [presented] to overcome the presumption of correctness at the close of plaintiff's case-in-chief, the burden of proof remain[s] on the taxpayer throughout the entire case...to demonstrate that the judgment under review was incorrect." Ford Motor Co., supra, 127 N.J. at 314-15 (citing Pantasote Co., supra, 100 N.J. at 413).

Accordingly, the court will evaluate and weigh the evidence presented to determine if plaintiff has met the requisite burden of proof.

III. Valuation

"There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of income and cost." Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div. 2001)(citing Appraisal Institute, The Appraisal of Real Estate

81 (11th ed. 1996), certif. denied, 168 N.J. 291 (2001)). “[T]he answer as to which approach should predominate depends upon the facts in the particular case.” WCI-Westinghouse, Inc. v. Township of Edison, 7 N.J. Tax, 610, 619 (Tax 1985), aff’d, 9 N.J. Tax 86 (App. Div. 1986). The sales comparison approach derives an opinion of market value “by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract.” Appraisal Institute, The Appraisal of Real Estate 377 (14th ed. 2013). The sales comparison approach involves a “comparative analysis of properties” and requires the expert to focus on the “similarities and differences that affect value...which may include variations in property rights, financing, terms, market conditions and physical characteristics.” Id. at 378. “When data is available, this [approach] is the most straight forward and simple way to explain and support an opinion of market value.” Greenblatt v. Englewood City, 26 N.J. Tax 41 (Tax 2011)(citing Appraisal Institute, The Appraisal of Real Estate 300 (13th ed. 2008)). Therefore, the court concludes the sales comparison approach is the most appropriate method to determine the true market value of the subject property.

Plaintiff’s expert relied on three comparable sales of single-family homes in Scotch Plains. Comparable sale one, situate at 1611 Cooper Road, was sold on October 15, 2012, comparable sale two, situate at 1461 Cooper Road, was sold on January 26, 2012, and comparable sale three, situate at 1430 Martine Avenue, was sold on April 18, 2013.

Although comparable sale one was sold 14 days after the October 1, 2012 valuation date, and comparable sale three was sold 6 and a half months after the October 1, 2012 valuation date, trial courts are afforded discretion in evaluating comparable sales occurring after the date of valuation. “A bona fide sale of property which is not remote should be taken into account as an indication of fair value, but should not necessarily be dispositive.” Harrison Realty Corp. v.

Town of Harrison, 17 N.J. Tax 174, 177 (App. Div. 1997); See also Rek Inv. Co. v. City of Newark, 80 N.J. Super. 552, 560 (App. Div. 1963) (sale of property two months after assessment date was “entitled to great weight”); Samuel Hird & Sons, Inc. v. City of Garfield, 87 N.J. Super. 65, 70-71 (App. Div. 1965)(sale of property eight and a half months after assessing date considered); Almax Builders, Inc. v. City of Perth Amboy, 1 N.J. Tax 31, 37 (Tax 1980) (sale of property seven months after assessing date “admitted for its rational probative valuation inference”); Glen Wall Assocs. v. Twp. of Wall, 99 N.J. 265, 283 (1985) (a sale less than three months after assessment date is an indicator of value). Thus, the court will evaluate the comparable sales presented by the expert to determine if they provide reliable and credible evidence of true market value.

a. Comparable Sale One

Plaintiff’s expert testified that comparable sale one consists of 8 rooms (4 bedrooms and 1 and a half bathrooms), is located “4 or 5 houses down from” the subject property and is located on a lot size of .95 acres. Therefore, in plaintiff’s expert’s opinion, this comparable was “very comparable to Ms. Gravers’ home.” Plaintiff’s expert observed that the “baths were not updated, kitchen was old, needed cosmetic work, such as painting,” therefore he opined that this sale was “very similar to the subject, Ms. Graver’s home.” In the expert’s opinion, comparable sale one was in a superior location because the subject property is appurtenant to a right of way, which the expert concluded has a negative impact on the value of the subject property. The expert expressed that “many potential purchasers would not even consider” purchasing the subject property due to its proximity to the right of way. The court permitted the expert’s testimony, based upon his years of professional experience in the arena of home sales, however the expert acknowledged during cross examination that he possessed no degree in engineering or

special expertise in electromagnetic fields. Qualified expert testimony is admissible when it will assist the trier of fact, however there must be a factual and scientific basis for an expert's opinion. Rubanick v. Witco Chemical Corp., 242 N.J. Super. 36 (App. Div. 1990), modified on other grounds, 125 N.J. 421 (1991). Thus, an expert witness must "give the why and wherefore of his...opinion, not just a mere conclusion." Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996); See also Rosenberg v. Tavorath, 352 N.J. Super. 385 (App. Div. 2002). Here, the expert did not provide the court with any market data, comparative study or analysis to support his conclusion that the right of way negatively impacted the value of the subject property. Although the expert's conclusion was based upon his professional experience, without the data and information supporting such conclusion the court is unable to assess and gauge the impact the right of way has on the value of the subject property.

Additionally, the expert testified that comparable sale one "appeared to be a little smaller square footage-wise," than the subject property. No testimony or evidence was offered to the court demonstrating the actual or observed square footage of comparable sale one. Plaintiff's expert readily admitted during cross examination that he did not know the square footage of the improvements for comparable sale one. Moreover, no testimony or evidence was presented regarding the age of the improvements for comparable sale one and its composition or quality of construction. Without this information, the court cannot adequately assess whether comparable sale one truly represents a suitable and appropriate comparable sale.

The expert further conceded that he was not familiar with the term "non-usable sale," a term common in the practice of real estate valuation, referring to the designation on form SR1-A, for the exclusion of a sale from the Director of the Division of Taxation's assessment-sales ratio study. See N.J.A.C. 18:12-1.1(a). Therefore, plaintiff's expert was unaware whether

comparable sale one was designated as a usable sale and his report failed to recite such information.¹ Although the expert stated that this comparable had been offered for sale and marketed to prospective purchasers for six months under a prior real estate listing, the real estate listing annexed to the expert's report and introduced into evidence demonstrates a listing date of August 13, 2012 and an under contract date of August 17, 2012, for a total of 4 days on the market. Effective cross-examination further revealed that the multiple listing for comparable sale one reflected that the "water, heat and gas [were] turned off," while the subject property was occupied by the plaintiff. The court's independent review of the multiple listing discloses that the property was labeled "vacant" and described it as a "handy man special." The listing further states that the property was "being 'sold as is'" and that it was the "buyer's responsibility" to obtain a certificate of occupancy for the property. Finally, the court observes that the multiple listing for this comparable states that the property is not connected to municipal water, rather is serviced by means of private well, another potentially distinguishing factor from the subject property, which was not addressed by the expert.

b. Comparable Sale Two

Plaintiff's expert testified that comparable sale two consists of seven rooms (3 bedrooms and 1 full bathroom), on approximately 1 acre of land. Although the expert testified that this property was located on the same street as the subject property, neither the expert's testimony nor report identified the distance between comparable sale two and the subject property. Further, in describing comparable sale two, the expert stated the property "needed again, work inside" and further expressed that it "required updating and cosmetic work." Additionally, no

¹ The November 20, 2014 Case Management Order and January 21, 2015 Amended Case Management Order required plaintiff to furnish defendant and the court with the form SR1-A identification number of the Division of Taxation for any comparable property sales which plaintiff intended to rely upon at the time of trial under R. 8:6-1(b)(2).

testimony was adduced regarding the age of the improvements constructed on the property or the quality of the construction. No testimony or evidence was offered to the court identifying the actual or observed square footage of comparable sale two. Further, plaintiff's expert readily admitted during cross examination that he did not know the square footage of comparable sale two. Effective cross examination further revealed that the seller of comparable sale two was an estate. Although plaintiff's expert did provide credible testimony that comparable sale two had been offered for sale on the multiple listing service for more than one year, the expert was unable to discern whether the sale had been identified as "not usable" under N.J.A.C. 18:12-1.1(a). In response to cross examination inquiry on this issue, the expert replied "I do not know what you mean by not usable." Moreover, plaintiff's expert's report failed to furnish such information as required under R. 8:6-1(b)(2).

The court's independent review of the multiple listing for comparable sale two discloses that the property was characterized as "vacant" and described it as "need[ing] some TLC." The court further observes that the listing identified the fuel source for the property as an above ground heating oil storage tank and noted the presence of natural gas service in the street abutting the property. However, no evidence was presented to the court regarding the presence or absence of these utilities on the subject property, thus leaving the court to again speculate whether comparable sale two was comparable and competitive with the subject property.

The sales comparison approach requires a "comparative analysis of properties" and demands that the expert focus on the "similarities and differences that affect value." However, the court has been presented with a lack of adequate information to enable it to weigh and evaluate the similarities and differences which exist between the subject property and comparable sale one and comparable sale two. Accordingly, the court concludes that

comparable sale one and comparable sale two do not provide reliable and credible evidence of the subject property's true market value.

c. Comparable Sale Three

The expert testified that this comparable consists of seven rooms on approximately 3 acres of land, however the home "needed a lot of repair." The expert further explained that subsequent to the sale of this property subdivision approval was granted dividing this property into 3 conforming building lots, each approximately 1 acre in size. Additionally, this property was not offered for sale on the multiple listing service, rather plaintiff's expert "had an exclusive listing" for this property. During cross examination the expert acknowledged that this comparable was "an estate sale" and that there were a "number of heirs that came out of the woodwork" during the pendency of the sale. Moreover, during argument on defendant's motion to dismiss under R. 4:37-2(b), plaintiff admitted that "the third sale being the land sale had a decrepit little ranch house on it, but we were not looking at the house there we were looking at the land as being credible to the issue."

Thus, based upon the material differences in lot size, the property being sold by an estate, the condition of the improvements on the property and the fact that this property was not offered for sale on the multiple listing service, the court concludes that this sale is not reliable and credible evidence of the subject property's true market value.

The opinion of an expert hangs upon the facts and reasoning which form the basis for the opinion. "Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Dworman v. Tinton Falls, 1 N.J. Tax 445, 458 (Tax 1980)(citing to Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959). The court concludes the expert's report and testimony in this matter was devoid of crucial and

fundamental factual information, market data and analysis to enable the court to accord it any weight.

Still, the court is mindful of its obligation “to 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.” Glen Wall Associates v. Township of Wall, 99 N.J. 265, 280 (1985)(citing New Cumberland Corp. v. Roselle, 3 N.J. Tax, 345, 353 (Tax 1981). However, to enable the court to make an independent finding of true value, credible and competent evidence must be adduced in the trial record. Here, the court was presented with inadequate factual information, data and analysis of comparable property sales. The court’s independent determination of value must be based “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 court concludes that as a result of the inadequacies in the expert’s report and testimony, the record contains insufficient credible evidence for this court to make an independent determination of the true value of the subject property by a fair preponderance of the evidence.

III. Conclusion

Accordingly, the court concludes plaintiff has failed to prove, by a fair preponderance of the evidence, that the subject property’s assessment exceeds its true value. Therefore, the court directs the Clerk of the Tax Court to dismiss plaintiff’s complaint in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'J. Novin', with a long horizontal flourish extending to the right.

Hon. Joshua D. Novin, J.T.C.