

NOT FOR PUBLICATION WITHOUT APPROVAL OF
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: Khubani, Poonam Trustee v. City of Long Branch
Block 304.04, Lot 13 (22 McKinley Street)
Docket No. 015406-2012

Dear Counsel:

This letter constitutes the court's decision following trial. 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:	\$1,235,300
Improvements:	<u>\$ 325,300</u>
Total:	<u>\$1,560,600</u>

The Chapter 123 ratio was 87.91%, with an upper limit of 101.1% and a lower limit of 74.72%. For the reasons stated below, the court finds that the preponderance of proofs have not established that the assessment is incorrect. Therefore, the assessment is affirmed.

*

PROCEEDINGS

Plaintiff presented a witness who was qualified by the court 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 \$1,250,000 as of the October 1, 2011 valuation date by analyzing the Subject under the sales comparison approach. Since this would fall outside the upper limit ($\$1,560,600/\$1,250,000 = 124.8\%$), his value conclusion would reduce the assessment to \$1,098,875.

After plaintiff's proofs, the City moved to dismiss the complaint under R. 4:37-2. The court denied the same finding that the plaintiff's expert's opinion sufficed as the minimal evidence of sufficient quality to overcome the presumptive correctness of the assessment. See MSGW Real Estate Fund, L.L.C. v. Borough of Mountain Lakes, 18 N.J. Tax 364, 378 (Tax 1998).

The City then presented its expert witness. Her report was admitted into evidence without objection. She concluded the value of the Subject as \$1,785,000 under the sales comparison approach. Since this would fall below the upper limit ($\$1,560,600/\$1,785,000 = 87.42\%$), her value conclusion would result in an affirmance of the assessment.

FACTS

(A) Subject's Description

The Subject is a three-storied ocean-front home located in the Beachfront North Redevelopment zone in a complex called "Bluffs." It was purchased in 2005 for \$1.9 million, and thereafter in the same year, transferred to a trust.

The property record card indicates that the site size is 38' x 56' and the gross living area ("GLA") is 3,547 square feet ("SF"). It has four bedrooms, three full and a one half-bathroom

(“3.5 bathrooms”). The first and second floors have a living room. The second floor has a kitchen with granite countertops and stainless steel appliances, as evidenced by the photographs. It also has a family room with a fireplace, a dining room, and a living room. All three floors have unobstructed views of the ocean. It has a two-car garage, one balcony in the front facing the ocean and one in the rear, and a porch.

Plaintiff’s expert was unclear as to the Subject’s form of ownership. He initially maintained the Subject was a condominium form of ownership but did not know whether there was a master deed or by-laws. He claimed that the Subject paid home-owner association fees but did not know how much. He agreed that the Subject’s three-stories belied a condominium structure. He also agreed that because a site was associated with the Subject, it may not be a condominium. He was aware that the Subject was in the redevelopment zone but had not reviewed the zoning ordinance to verify the permissible uses therein (i.e., whether condominiums or otherwise). He stated that the Subject was likely a planned unit development or “PUD” because it had a site attached to it.

The zoning permits townhouses. However, the City’s expert’s report notes that the redevelopment zone where the Subject is located “also has the Grand Resorts condominium complex.” The plaintiff’s expert’s adjustment grid listed the Subject as a townhouse “use.” Both experts agreed that the Subject was legally conforming under the zoning requirements. Therefore, the court finds the Subject to be a three-story townhouse in a PUD.

Both experts agreed that the Subject is a high-end residential unit in a location which attracts “resort-style” buyers to whom ocean view is an important purchase factor.

Plaintiff's expert's report deemed the Subject's overall condition as "average" while the City's expert deemed the same as "good." Based on the photographs in the City's expert's report, the court finds the Subject's conditions, both exterior and interior, as good.

Both experts agreed that the Subject's highest and best use as vacant was residential, and as improved was its current use.

(B) Comparable Sales Description

(i) Plaintiff's Expert's Comparables

Plaintiff's expert used three sales as indicators of the Subject's fair market value. He limited the usability of the available sales to those that have ocean view and within one year of the assessment date (thus, between October 1, 2010 to October 1, 2011), especially because there was a nation-wide economic downturn after October 1, 2011. His report stated that due to limited inventory, he had to go outside of one mile into a neighboring area of similar appeal. His information source was the Multiple Listing Services ("MLS") and tax records. All sales were located in the City. His report noted that all had an ocean view. He did not inspect the interiors of any of the comparables.

His adjustments were for three factors. One was for GLA which was at \$100 per SF. He explained that he used two sales for this purpose, 14 McKinley, (which sold in 2012 for \$1,875,000) and 16 McKinley (which sold in 2009 for \$1,900,000), both of which were on the Subject's street but which he did not use as comparables. He then adjusted their sale prices at 2% per month until the assessment date for market conditions. In this connection, he testified that the national real estate market collapsed in 2008 due to the subprime mortgage crisis; 2009-2011 market was softest; but the market rebounded from 2012 onwards but slowly. He admitted that he did not perform an analysis of the Long Branch market.

After the adjustments for market conditions, he arrived at adjusted sales prices of \$1,825,000 and \$1,000,855 respectively. He then divided the difference of \$824,145 by their GLA of about 3,577 SF, which provided a per SF value of \$1,075.¹ The expert viewed this as much too high, so he instead used \$100 per SF.

The second adjustment was \$30,000 for garage and \$10,000 for a half bath. He stated that the difference in the sales prices of his comparable two and three (after adjustment for GLA) was about \$35,000, which he allocated to the garage and the bathroom, these two being the only differences in their physical characteristics. He testified that he allocated \$10,000 to each half bath, being that \$5,000 was not “enough for the property of this value.”

His third adjustment was for age, which he estimated at 5% “reasonable” rate. His report had a somewhat cryptic explanation in this regard by noting that “typically sales older in actual age are more marketable and more desirable than sales older in actual age.”

The expert’s first comparable was sale of Unit 209 located at 22 Cooper Avenue, 0.08 miles northwest of the Subject. It is a three-story “townhouse use” mansion-style row unit condominium located in the “Grand Resorts” condominium complex built in 2004 with 3,619 SF of GLA. The report listed it having a total of nine rooms and four bedrooms, however, the property record card showed it as having eight rooms and three bedrooms. The expert explained he used the room listed as a library/study in the MLS as a fourth bedroom because it had a closet, however, he admitted that he had not inspected the interior. The court thus finds the comparable has having three bedrooms since plaintiff’s expert himself stated that the description in the MLS is more a sales pitch.

¹ The difference in the two adjusted sale prices, \$845,145, when divided by the GLA of approximately 3,577 SF equates to a per SF value of approximately \$236.

A similar discrepancy was as to the garage, the property record card indicating a one-car basement garage but the expert's report indicating a two-car garage. The expert agreed that the MLS described the comparable as having a one-car garage.

The comparable had five full bathrooms, two balconies, one porch and one fireplace. However, the expert testified that there was no fireplace. The property record card indicated an elevator in the house but the expert was unaware of this feature having not inspected the interior. He did not know whether access to the comparable was private or through a common lobby since he had viewed only the exterior of the entire complex. The homeowner's association fee was about \$463 per month.

The comparable was farther away from the ocean than was the Subject. It had an obstructed ocean view unlike the Subject. The expert agreed that an adjustment for view was reasonable, however, he did not make an adjustment because it was difficult to quantify the same in the absence of sufficient data.

The property sold for \$1,300,000. The expert's report noted a sale date of September 2, 2011, whereas the property record card showed a sale date of August 24, 2011. The difference is negligible for purposes of an analysis in terms of proximity to the assessment date. The expert made negative adjustments of \$30,000 for the additional bathrooms and \$7,000 for the larger GLA in the comparable. His adjusted sales price was \$1,263,000.

The second comparable was located at 17 Waterview, a beachfront home about 14 years old, with an ocean view. It had three bedrooms, three bathrooms, a GLA of 2,589 SF, a deck, one fireplace and a one-car garage. The homeowner's association fees were \$593 a month. The comparable was a two-story condominium in a three-story building. It was not a PUD. It was in

a row like the Subject, but all units in the row did not face the same direction as did the units in the Subject's row. Rather some homes faced each other.

It sold October 5, 2010 for \$1,075,000, which sale included furniture and furnishings. The expert adjusted the price as follows: +\$10,000 because the comparable had a half-bathroom less than the Subject; +\$96,000 for GLA difference; and +\$30,000 because of the one-car garage. His adjusted sales price was \$1,211,000.

The expert's third comparable was a unit in a high-rise multi-storied residential complex located at 717 Ocean Avenue, Apartment 210. His report noted its design was "townhouse use" and had an ocean view. It had three bedrooms, two full and one half bathrooms, and a GLA of 2,190 SF. He noted the average age as 28 years, which he claimed equated to 15 years as its effective age. Although his report noted it had a two-car garage, he testified that this was likely two spaces as opposed to a private garage.

The apartment sold February 15, 2011 for \$1 million. He made positive adjustments for age (\$50,000); for one less full bathroom (\$20,000) and for lesser GLA (\$136,000). His adjusted sales price was \$1,206,000.

He reconciled his adjusted sale prices of \$1,263,000, \$1,211,000, and \$1,206,000, for a final value conclusion of the Subject as \$1,250,000.

(ii) The City's Expert's Comparables

The City's expert used five comparables, all located in the City and on the same street as the Subject. Two were active listings. They were all of the same age, oceanfront, with ocean view and townhouse style. She opined that the Subject was a different criteria being a high-end townhouse PUD with close proximity to the ocean. Therefore she looked for similar sales and the most comparable ones were sales occurring after the assessment date.

She generated an Excel spreadsheet of the residential sales in the City from 2004 to 2012, which included all new homes, high-end and low-end sales, and excluded the sales categorized as non-usable. The sales indicated a decline in 2009 by about 26% (annual) and a slow but steady increase in 2010 onwards, 2010 being stable, a 2.2% annual increase from 2010 to 2011, and a 1.5% annual increase from 2011 to 2012.

Her other adjustments were for GLA at \$125 per SF. She testified that she used the 2005 paired sales of homes on Grant Street (which lies behind the Subject) which differed by 624 SF of GLA. She also used sale prices of new units with similar sales dates. The sale prices provided a range of \$170.90 to \$245 per SF so she used \$125 as a reasonable number. She also made a 5% adjustment for view the same being reasonable in her opinion and experience.

Her first comparable was the townhouse PUD located at 16 McKinley which sold September 25, 2009 for \$1,900,000. She verified the sale with the realtor and also the sale deed which confirmed it was an arms-length sale. Other than the additional 30 SF of GLA (3,577) and slightly larger site size (44' x 56'), it was similar to the Subject, thus had the same ocean view, number of rooms, bathrooms, one double fireplace, two-car garage, and open porches. She made a market conditions adjustment of -4% total (-\$78,000) and GLA (-\$3,850) for an adjusted sale price of \$1,820,250.

Her second comparable was a townhouse PUD located at 6 McKinley. It sold September 14, 2012 (almost one year after the assessment date) for \$1,700,000. It was identical to the Subject thus she made only a market adjustment. As adjusted, the sale price was \$1,666,000. She however placed less weight on the sale because it closed late 2012, she was unable to verify the details, and further the MLS stated it was a "public sale."

The third comparable was a townhouse PUD located at 14 McKinley. It sold May 12, 2012 (about seven months after the assessment date) for \$1,875,000. It was identical to the Subject thus she made only a market adjustment. As adjusted, the sale price was \$1,856,250.

The expert's fourth and fifth comparables were active listings located at 2 McKinley and 4 McKinley, which were listed for \$1,997,000 and \$1,999,000 respectively. Their physical characteristics were also identical to the Subject, except 2 McKinley had hotel view which was unsightly. The expert testified that she included their information because data of sales of the Subject's type (high-end oceanfront townhouse PUD) was scarce with no sales from 2009 to 2012; these listings evidenced that the 2013 market was strong for these properties; and their asking prices supported the 2012 sales. She however placed no weight on these listings for her value conclusion since the final sale prices were unknown.

She placed equal weight to sales one and three (35%); less weight to sale two (30%); and none to the listings. Her value conclusion was \$1,785,000.

ANALYSIS

(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. 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 Methodology

The sales comparable method is appropriate for valuation of a residential single-family property where, “sufficient recent, reliable transactions” exist to provide a “supportable indication of market value” through “value patterns or trends in the market.” See Appraisal Institute, The Appraisal of Real Estate 297 (13th ed. 2008). Both experts used the sales comparison approach, which the court finds suitable.

(C) Credibility of Value Conclusions

The court finds that plaintiff’s expert’s comparable sales are problematic. His third comparable has an address as an “apartment” and is located in a multi-storied high-rise building. It is unclear whether it is a condominium because he had not verified whether there was a condominium master deed, and further had testified earlier that the Subject was not a condominium because it was a three-storied building. Although he reasonably explained that the form of ownership (condominium or townhouse) is not crucial in this case because close proximity to the ocean with an ocean view dictates comparability. For valuation purposes, however, an apartment complex is treated differently (as an entire complex) than a single-family home or a condominium. Apartments also attract a different type of market (rental). Therefore, his comparable three is not reliable as an indicator of the Subject’s market value.

The court is also not persuaded by the expert’s reasoning for not using the 2009 and 2012 sales of homes located on the Subject’s street and almost identical in physical characteristics to the Subject (and used by the City’s expert). He testified that he limited his comparables to sales

occurring within one year of the assessment date. Yet, he used the 2009 and 2012 sales of homes on the Subject's street, as adjusted for market conditions, as the basis for his GLA adjustment. If those sales can be used to reflect the per SF value as of the assessment date, then they should logically be usable as comparable sales. The expert was unable to explain this inconsistency other than to state that it was acceptable in the general real estate appraisal world to use sale prices for adjustments only. Without more information on why or how this practice reflected the market, since the search is for market value, the court is not persuaded that the expert properly rejected these sales, especially when they were identical to the Subject in all physical aspects.

Although plaintiff's expert's two and three story high-end homes in his comparables one and two are usable, they are not reliable indicators of the Subject's value. Neither had an unobstructed view of, and proximity to, the ocean as did the Subject, rendering them less attractive. The adjustments were unpersuasive. First, his reduction of \$1,075 per SF to \$100 for purposes of the GLA adjustment was unconvincing and subjective.² The sales he used for this purpose were almost identical to the Subject (making his choice of these sales as reasonable), thus, it is difficult to understand such a large discount. Further, he did not analyze how much of the sale prices is allocable to land to justify the reduction from \$1,075 to \$100 per SF. His explanation that he used \$100 per SF because he felt that \$1,075 per SF was too high, is thus, not objectively supported.

Second, plaintiff's expert's adjustment for a bathroom was unpersuasive. Plaintiff's expert testified that he derived the adjustment for the half bath by calculating the difference in the sales prices of his comparables two and three (after adjustment for GLA), which was about \$35,000. Plaintiff's expert thus allocated \$30,000 per garage but his reason for allocating

² It is unclear as to how plaintiff's expert derived at a \$1,075 per SF value. See supra n.1.

\$10,000 per half bath, being that \$5,000 was not “enough for the property of this value” was subjective, and plaintiff’s expert could not substantiate this assertion with credible evidence.

Third, he stated that he allocated \$30,000 of the price differential between comparable two and three because the former had a one-car garage but the latter had a two-car garage. But comparable three did not have a private garage. Thus, the basis for the adjustment is not credible. Further, if he deemed a one-car garage as meriting this upward adjustment, he should have included it for his comparable one which he agreed had a one-car garage (which would increase his computation of that sale’s adjusted price to \$1,293,000).

Due to all of the above issues, the court finds that the three comparable sales are not reliable indicators of the Subjects market value. Therefore, plaintiff has not proved by a preponderance of evidence that the assessment placed on the Subject is incorrect. As explicated in MSGW, supra, even after the court rules that the plaintiff has overcome the presumed correctness of an assessment, the court must, at the close of trial, “weigh and evaluate” the evidence, and “determine whether the plaintiff has demonstrated, by a preponderance of the evidence, that the assessment should be adjusted” irrespective of whether the “the defendant has asserted a counterclaim or, without a counterclaim, seeks an adjustment in the assessment pursuant to N.J.S.A. 54:51A-6(a).” 18 N.J. Tax at 376-77.

The City’s expert’s reliance on the September 2009 and May 2012 sales (her comparables one and three to which she placed most weight), are not per se unreasonable solely because of their respective lack of proximity to the assessment date. Those sales were almost identical to the Subject. They required virtually no adjustments except for GLA and market conditions. Thus, they were adequately usable comparables. She also made adjustments to these sales for the change in market conditions to ensure their comparability to the Subject. This is

appropriate. See Glen Wall Assocs. v. Township of Wall, 99 N.J. 265, 283 (1985) (generally a sale should not be too “remote” because the “benefit of . . . comparison is lost if the effects of time have altered the factors which result in a determination of value,” thus, depending on the circumstances, courts have deemed post-assessment sales as sufficiently probative of the subject property’s value) (citations and quotations omitted).

The court finds that the City’s expert’s adjustments for market conditions were reasonable and un-contradicted. Her data in this regard analyzed residential sales in the City. Although the median she computed included all residential sales, as opposed to only sales within the Subject’s perimeter, it was not unreasonable because it included high-end sales of as much as \$6 million, all usable sales and sales of new homes.

As to her GLA adjustments, she failed to explain why the 2005 sales which were the basis for her adjustments, did not require any adjustment for market condition. Her own data indicated that the median sale prices of homes in the City increased from 2005 to 2008, after which it declined in 2009, and the real estate market in the City then started to slowly rise. However, even if the court were to disregard this adjustment solely because the comparable was identical to the Subject in all other respects with a GLA differential of only 30 SF, and give comparable one lesser weight than comparable three³ (but more weight than comparable two, the September 2012 sale), the City’s expert’s value conclusion is still reasonable for the reasons stated above.

³ The City’s expert provided a GLA adjustment only to comparable one, the September 2009 sale, which was one of the two sales that she placed the most weight on.

The City's expert value conclusion provides an assessed-to-true value ratio of 87.42% (\$1,560,600/\$1,785,000). This is within the 15% corridor. Therefore, the assessment is affirmed.

Based on the foregoing explanation, the court finds that plaintiff has failed to persuade the court that the assessment is incorrect. A judgment will be entered affirming the assessment.

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 under the name.

Mala Sundar, J.T.C.