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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

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BY REGULAR & ELECTRONIC MAIL

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Re: Stransky, Petr v. Township of Howell
Block 156, Lot 28
Docket No. 016656-2012

Dear Mr. Stransky and Ms. Lombardi:

This letter constitutes the court's decision following trial in the above-captioned matter. Plaintiff contests the judgment of the Monmouth County Board of Taxation ("County Board") which affirmed the local property tax assessment for tax year 2012 on the above captioned property ("Subject") located in defendant Township of Howell ("Township"). The affirmed, and thus, contested assessment, is as follows:

Land:	\$160,000
Improvements:	<u>\$ 66,000</u>
Total:	\$226,000

*

The Chapter 123 ratio applicable to tax year 2012 was 105.63%, with an upper limit of 121.47% and a lower limit of 89.79%. The Township conducted a reassessment for tax year 2012.

Neither party presented any expert. Plaintiff testified as to three comparables which he had relied upon as being most indicative of the fair market value of the Subject. He testified that based on the sale prices of the comparables, and the negative location of the Subject which became heavily traversed with large commercial vehicles after the Township constructed a bridge in close proximity to the Subject, required the Subject's fair market value be set as \$180,000.

The court finds the plaintiff's unadjusted sales, without more, do not tend to prove the Subject's fair market value. Therefore, he has failed to overcome the presumptive correctness of the County Board judgment, which is hereby affirmed.

FACTS

(A) Subject Description

The Subject is a lot comprising about 13½ acres, of which 12½ acres is assessed as a farmland. One acre of the site is improved with a 2-story single-family residence (Class 3A) which was built in the 1930s. Plaintiff purchased the Subject in the 1980s. The Subject is only about 27 feet away from the street. Across the street from the Subject is a warehouse.

The residence has 3 bedrooms, a full bath, one half-bath, and unfinished basement. The gross living area ("GLA") is 1,256 square feet ("SF"). The roof is old, and plaintiff updated the heat and electrical system sometime in 1991.

Plaintiff testified that Route 524 which is proximate to the residence, was improved and a bridge therein upgraded about last two years but prior to the assessment date. This, according to

plaintiff, resulted in heavy commercial traffic, with several 18-wheelers, even during the early morning hours, causing disturbance and safety issues.

(B) Comparable Sales

Plaintiff relied upon three comparable sales, all located in Farmingdale where the Subject is also located. These are:

	Location	Sale Date	Sale Price	Description
1.	59 Adelphia Road	6/30/2010	\$162,000.	Built 1928; one-acre site; Old Style; 1½ story; Class 2; 1,684SF GLA; 3 bedrooms; 1½ bath; basement; detached garage; two porches; fireplace.
2.	198 West Farms Road	6/7/ 2010	\$137,000	Built 1940; 1.9-acre site; Old Style; 2-story; Class 2; 1,073SF GLA; 2 bedrooms; 1-bath; enclosed and open porches.
3.	225 Casino Drive	6/2/2011	\$185,000	Built 1950; 2.37-acre site; Old Style; 2-story; Class 2; 1,688/1,344SF GLA ¹ ; 4 bedrooms; 2 baths.

The property record card for Comparables One and Two indicated the sale to be nonusable under category 26. Plaintiff testified that Comparable One was in better condition than the Subject although he conceded that he had not viewed its interior. However, the property record card indicated that condition of the kitchen was average. Plaintiff stated that Adelphia Road has heavy traffic but only of automobiles, not commercial trucks, therefore, was in a superior location as compared to the Subject.

Plaintiff testified that Comparable Two was in better condition than the Subject with many upgrades which he personally witnessed when he visited the property when it was on the market for sale. However, the property record card indicated that the condition of the bathroom and kitchen was average.

¹ Page 1 of the property excerpt from Monmouth County’s publicly available database shows the comparable as having 1,688 SF, another page shows the “floor area” as 1,344 SF.

Plaintiff testified that Comparable Three was in better condition than the Subject. However, he had only viewed the exterior. He stated that as a re-modeler of homes, he viewed the comparable as having good potential, rather than poor condition. He stated that the comparable had a very desirable location, set far back from the street, and it did not experience heavy vehicular traffic or 18-wheelers. The comparable was demolished but plaintiff was unaware whether the demolition occurred before or after the sale.

FINDINGS

(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 must prove “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).

If the presumption of correctness is overcome, the court must determine the value “based on a fair preponderance of the evidence” provided by “both parties.” Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312-13 (1992). The “court should proceed to weigh and evaluate the evidence and decide the appeal on the merits, whether or not the defendant” seeks relief against the assessment. MSGW, supra, 18 N.J. Tax at 378.

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 bears 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 comparison 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.), certif. denied, 168 N.J. 291 (2001). The market value for the subject is derived by comparing similar properties that have recently sold, identifying appropriate units of comparison, and making adjustments to the sale prices of the comparable properties based on relevant, market-derived elements of comparison. Appraisal Institute, The Appraisal of Real Estate 301-02 (13th ed. 2008). There must be substantial similarity between the subject property and the comparable property. Venino v. Borough of Carlstadt, 1 N.J. Tax 172, 175 (Tax 1980), aff'd, 4 N.J. Tax 528 (App. Div. 1981). See also The Appraisal of Real Estate, supra, at 301 (comparable properties should be sought in a competitive market by considering characteristics such as “property type, date of sale, size, physical condition, location, and land use constraints” since the “goal is to find a set of comparable sales as similar as possible to the subject property to ensure they reflect the actions of similar buyers”).

Here, two of the three comparables had a nonusable category of 26. While this does not automatically prohibit the consideration of the sales as comparables, nonetheless, they must be used “with care,” the “circumstances of the sale must be thoroughly researched . . . [, and any] adjustment should be well supported with data,” otherwise the sale should be “discarded” as a comparable. Id. at 329. Plaintiff was unable to establish why the comparables were reliable indicators of value regardless of their nonusable categorization. For these reasons alone, the court cannot consider these two comparables as reliable indicators of market value.

Further, there were discrepancies in site and GLA size for which there were no adjustments. Indeed, the GLA of Comparable Three is unclear. Understandably, plaintiff as a

lay person could not opine to a market based adjustment amount for these factors, however, the court cannot divine the same without some evidence in the record (such as, for instance, vacant land sales in the Township). For the same reason, while the court does not question plaintiff's testimony that the new construction of the bridge increased the commercial vehicular traffic at odd hours near his house, it is difficult to divine an adjustment in this regard especially without consideration of the fact that plaintiff enjoys 12½ acres of farmland that none of the comparables possessed.

As to Comparable Three, plaintiff was unsure whether it was demolished before or after the sale, and whether the demolition was because of the comparable's poor condition (that it necessitated demolition). His opinion that the comparable "had potential" was based on his profession as a re-modeler of homes, but this does not assist the court in determining whether the sale was a reliable or credible comparable for purposes of determining the Subject's true value.

Further, plaintiff did not provide any photographs of either the Subject or the comparables for the court to be able to assess the credibility of his assertions that the comparables enjoyed superiority due to their condition or location. Indeed, the property record cards he produced reflected the condition as only average.

Providing a list of comparable sales with unadjusted sale prices, and asking the court to reduce the assessed value of the Subject somewhere between such sale prices, does not meet a taxpayer's burden of providing "sufficient competent evidence of true value of the (subject) property." Siegfried O. v. Township of Holmdel, 20 N.J. Tax 8, 20 (Tax 2002). Here, based on the above analysis, the court finds that plaintiff failed to provide sufficient competent evidence to overcome the presumptive correctness of the County Board's judgment. Borough of Rumson v. Haran, 3 N.J. Tax 590, 592 (Tax 1981) (county board of taxation's judgment is entitled to a

presumption of correctness unless the taxpayer provides “sufficient competent evidence of true value of the property”).

CONCLUSION

For the foregoing reasons, the County Board’s judgment is affirmed. An Order reflecting the affirmance will be entered by the Clerk of the Tax Court.

Very truly yours,



Mala Sundar, J.T.C.