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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE

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April 13, 2015

BY ELECTRONIC MAIL
John Jr. Cap et al. (pro se)
West Orange, New Jersey 07052

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Re: Cap et al v. Borough of Belmar
Block 193, Lot 8
Docket No. 007035-2014

Dear Mr. & Mrs. Cap and Counsel:

This letter constitutes the court's decision after trial of the above captioned matter. Plaintiffs maintain that since they demolished their storm-damaged home, which had been boarded up and uninhabitable as of the valuation date for tax year 2014, the value for the same should be $0. They contend that the Zoning Board of Adjustment had agreed with them that the house was severely damaged by hurricane/superstorm Sandy and should be demolished rather than renovated/rehabilitated when it granted plaintiffs a demolition permit and permission to build a new home with variances. This, per plaintiffs, proves that the value of the house was $0, therefore, the judgment of the Monmouth County Board of Taxation ("County Board") affirming the assessment of $77,200 (allocated to the improvement) is wrong.

*

For the reasons stated below, the court is constrained to affirm the County Board's judgment. Plaintiffs' choice to demolish the house post-assessment, and the Zoning Board's agreement with this decision which formed the basis for the grant of a demolition permit, does not, without anything more, establish that its value was $0 on the assessment date. While it is undisputed that the house was storm-damaged and uninhabitable, plaintiffs failed to prove that the still-standing structure was completely valueless for local property tax assessment purposes. . Without qualitative and quantitative factual data, or other evidence, the court cannot independently decide the value of the home, or assign it a $0 value, or arbitrarily reduce the allocated value to a de minis amount. The court is therefore compelled to dismiss plaintiffs' complaint.

FACTS

Plaintiffs own the above captioned property ("Subject"). The Subject is a lot improved by a single-family home which was built around 1930. It is the plaintiffs' second home.

The house was damaged by hurricane/superstorm Sandy which occurred in October of 2012. Based on its location, the house was deemed to be in the "impact zone," wherein homes suffered significant flooding. Plaintiffs produced copies of ten (10) pictures showing the damage wrought by the storm. The copies are black and white, the contents fuzzy and of overall poor quality. However, they do show three exterior doors/doorways are boarded up and one of the four support structure of the outdoor portico is missing. While large sections of the exterior vinyl siding remains intact, some parts are damaged or missing, and allow for a line of sight into the interior. These missing sections expose the existing exterior support structure (wooden beams), however, the damage, if any, is indiscernible. The pictures of the interior show leftover debris and damaged furniture. Large sections of what appear to be the interior walls are missing,

exposing the interior beams and support structure. However, the extent of the damage to the interior support structure or even to the second floor is not apparent from these pictures.

In December 2012, an employee of a revaluation company retained by the Borough made an exterior inspection of the Subject. Based on this, he concluded that the improvement should receive a 30% reduction for non-structural but significant flood damage to the first floor pursuant to a "Disaster Relief Data Collection Worksheet" developed by the Division of Taxation.[1] Plaintiffs were not notified of this inspection nor given a copy of the 30% recommended reduction. The assessor approved the recommendation and reduced the 2012 value allocated to improvement from $113,000 to $77,200. He set the 2013 assessment as follows:

Land:	$214,000
Improvements:	$ 77,200
Total:	$291,200

Plaintiffs did not appeal the 2013 assessment although they received the notice of assessment, which included their appeal rights.[2]

After dealing with issues on roof damage with their insurance company, plaintiffs filed an application to have the home demolished on March 8, 2013. On March 28, 2013, the Borough's Zoning Board of Adjustment passed a resolution permitting demolition and building a new home in its stead. The resolution noted that plaintiffs had testified as to the nature and extent of damage to their house by the storm rendering the same uninhabitable, and making it more appropriate for demolition and rebuilding as opposed to repairs/renovation. The resolution also

[1] The sheet contains 4 columns. The "Description" column contains various categories with a special tax code assigned to each. The non-structural damages are sub-categorized by the extent of flooding such as "Minimal," "Moderate," and "Significant," for which the "Assessment Reduction" is set at 5%/10%-15% and 30% respectively. The structural damages are sub-categorized by the extent of damages such as "Minimal," "Moderate," "Significant," "Extreme," and "Total," for which the "Assessment Reduction" is set at 5%, 20%, 60%, 90%, and 100% respectively.

[2] Plaintiffs claimed they had personal medical reasons in 2012 which impeded their ability to challenge the assessment. The court has no subject matter jurisdiction over the 2012 tax year, so these contentions are irrelevant.

noted that variances were sought in connection with the new construction. The Board then made certain fact findings for purposes of granting plaintiffs' development application with variances based upon the testimony received, which as pertinent here,[3] are that the house was extensively damaged by the storm and it was more "practical" to demolish and reconstruct the house than its "mere renovation." The Board granted plaintiffs' application to demolish the house and build a new (larger) one, and required them to obtain a certificate of occupancy for construction/development within 24 months of March 28, 2013. The assessor was not notified of, nor participated in, the resolution proceedings. Plaintiffs received a demolition permit on July 8, 2013.

Sometime in 2013, the assessor personally inspected the exterior of the house. As the house was upright, the roof was not caved in, and all the walls/supports were "at 90-degree angles," the assessor concluded that there was no structural damage to warrant a change in the 30% reduction given for the 2013 assessment. However, since he had received several telephone calls from various government officials (unconnected with the assessor's office) of plaintiffs' complaints that the home should have no value being Sandy-damaged, the assessor informed Mr. Cap that if the house was demolished by assessment date or even before January 10, 2014 (the deadline to submit his tax list), he could reduce the improvement value to $0.[4] Since the assessor did not receive such confirmation within either deadline, he imposed the same assessment of 2013 ($291,200, allocated $214,000 to land; $77,200 to improvements). Applying the 2014 average ratio of 66.69%, the assessment provides an implied true value of $436,650.

[3] The bulk of the resolution pertained to findings on the validity of the variances and how the new home will fit into the Borough's zoning plans and the "overall post-hurricane appearance of the area."

[4] Plaintiffs disputed this fact, however, the court finds the assessor's testimony credible. Regardless, it should be noted that allocating a $0 value is not necessarily contingent or conditioned upon the total demolition of a structure.

So plaintiffs could obtain further relief from the County Board (since he was statutorily barred from reducing an assessment after the tax list date), the assessor filed a petition of appeal with the County Board against his own assessment. At the County Board hearing in early February 2014, plaintiffs were asked if they had demolished the house. When they responded in the negative, apparently the County Board asked if demolition could be done within the next 45 days. Plaintiffs responded they could do so in two weeks. The County Board hearing however was not adjourned thereafter to give plaintiffs time to demolish the house.

On February 27, 2014, plaintiffs faxed a letter to the assessor which stated that the home was fully demolished at a cost of $8,300. The assessor immediately notified the County Board of his receipt of the demolition notice.

The next day, February 28 2014, the County Board entered a judgment affirming the assessment using Judgment Code 2B (assessment within the common level range). The judgment was mailed March 21, 2014.[5] Plaintiffs then filed the instant complaint.

ANALYSIS

(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). Therefore, "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). "The presumption . . . stands, until sufficient competent evidence to the contrary is adduced." Township of Little Egg Harbor v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998).

[5] The County Board received a copy of plaintiffs' letter of demolition on March 27, 2015.

A taxpayer can rebut the presumption by introducing "cogent evidence" which is one that is "definite, positive, and certain in quality and quantity." Pantasote, supra, 100 N.J. at 413. Plaintiff must present the court with "evidence sufficient to demonstrate the value of the subject property, thereby raising a debatable question as to the validity of the assessment." MSGW, supra, 18 N.J. Tax at 376. If a party has not met this burden, the trial court need not engage in a further evaluation of the evidence to make an independent determination of value.

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 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) Validity of Assessment

The assessment of real property for local property tax purposes is a statutorily mandated annual exercise. An assessor must "after examination and inquiry, determine the full and fair value of" real property "at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October 1" of the year prior to the tax year. N.J.S.A. 54:4-23. In this connection, an assessment should reflect a value that "is based upon the actual condition of the property as of the date of assessment." Russo v. Borough of Carlstadt, 17 N.J. Tax 519, 523 (App. Div. 1998).

If a property's condition is changed negatively after the assessment date due to certain events, such as a storm, then, our statutes allow a recognition for the same in the assessment,

provided the assessor is timely notified. N.J.S.A. 54:4-35.1 provides that where a building "has been destroyed, . . . , or altered in such a way that its value has materially depreciated, . . . by the action of storm . . . , which depreciation of value occurred after October first in any year and before January first of the following year," the assessor must determine the post-damage value as of January 1 of the tax year provided he or she receives notice of the damage before January 10 of the tax year.

Here, as he had done for tax year 2013, the assessor adjusted the 2014 assessment to account for the damaged condition of the improvement. The issue then is whether his 30% reduction of assessment (the reduction being allocated to the improvement) is reasonable. See Transcontinental Gas Pipe Line Corp. v. Township of Bernards, 111 N.J. 507, 517 (1988) (an assessment is presumptively correct "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 [not] so patently defective").

There is no doubt that the house suffered damage being in the impact zone of the storm as of October 1, 2013. It is undisputed that the house was uninhabitable and lay vacant on that date. The assessor agreed that the 30% reduction amount in the Division of Taxation's Data Collection Worksheet would not impede his ability to provide an even higher or lower reduction in connection with his statutory duty to determine the Subject's true value.[6] Further, he made no interior inspection and concluded a lack of structural damage by an exterior visual inspection. These factors permit the court to find that the plaintiffs have overcome the presumptive

[6] The instructions to the Division of Taxation's Data Collection Worksheet notes that data and associated tax codes for the damages "will provide a tracking tool to estimate losses to ratable losses" due to the storm, and that these special tax codes are intended to "serve as guidelines to ensure" fair and uniform treatment to all property owners within a particular township.

correctness of the quantum of the assessment, and by extension, of the County Board's judgment which affirmed that assessment.

However, plaintiffs have not persuaded the court that the value of the storm-damaged home should be nothing other than $0.[7] The structure of the house was upright in the pictures. Major portions of the exterior appear undamaged. The one pole that was missing was not essential to the house's structure but was a support to the portico's awing, which was still upright. Therefore, and although the interior was damaged and uninhabitable, the court is unpersuaded that the home is worth $0.

The fact that plaintiffs decided that it was less costly to demolish the house and rebuild it rather than repairing and renovating it does not translate to a conclusion that the improvement was worthless for local property tax purposes. The Zoning Board's resolution permitting them to demolish the house and build another (much larger) home on the site does not change this conclusion. While evidence of the fact that the Zoning Board granted plaintiffs a demolition/construction permit, the resolution is inadmissible hearsay when being used to prove that the house was of no value for local property tax purposes. Indeed, its value as credible evidence of the home's value for local property tax assessment purposes is questionable because the Zoning Board's findings of the demolition-worthiness of the house was required to provide the required factual justification for its grant of a demolition permit. Although plaintiffs could certainly use the post-assessment demolition as evidence to further corroborate a $0 value of the

[7] Plaintiffs only contended that the value of the home should be $0, and thus, did not appear to challenge the value allocated to the land portion of the Subject. Generally, the assessment represents the value of the entire parcel and the allocation between land and improvements is merely an administrative act. New Jersey Foreign Trade Zone Venture v. Township of Mt. Laurel, 10 N.J. Tax 330, 335 (Tax 1989), aff'd, 242 N.J. Super. 170 (App. Div. 1990). In any event, they did not produce any evidence of land values such as by showing comparable land sales.

structure, they still have the burden of first proving, by reliable admissible evidence, that there is no value to the improvement.

Thus, plaintiffs could have provided some initial evidence, such as for instance, comparable sales of homes in the neighborhood or competing neighborhoods, where evidence showed that the sales price was primarily for the land value due to the condition of the improvement (or that the existing improvement was demolished after purchase). They could have obtained an expert report and opinion which contained objective facts and data to conclude that the Subject should be valued as vacant land only because the improvements had no contributory value, with corroborative testimony. See e.g. Appel v. Englewood, 15 N.J. Tax 537, 541, 543 (Tax 1996) (accepting the expert's opinion, which was based on factual data, that the older, more obsolescent, functionally inutile home should be treated as having "no value," thus land must be treated "as if vacant" since it is "more valuable than . . . as currently improved," and noting that the "court must consider whether or not the value of the subject land in a vacant condition is greater than its value as currently improved, which is essentially a highest and best use consideration"). They could have proffered an engineer's or other professional's testimony of estimated costs to cure, and the facts of the structural damage or other damage (such as mold infestation due to water retention) to show that the shell of the house was worthless. However, there were no such or similar proofs. "Although it may not be cost effective to engage an expert witness, taxpayer is not relieved from the responsibility of providing this court with competent and sufficient evidence of value." Otelsberg v. Township of Bloomfield, 18 N.J. Tax 243, 249 (Tax 1999). Proof of un-inhabitability of a house does not automatically equate to proof that its value is $0. If such proposition was accepted, then the legal requirement to prove its value would become either a nullity or a meaningless exercise.

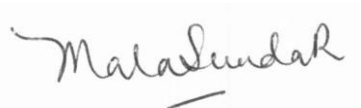
It is true that this court is assigned with appraisal expertise. Nonetheless, its "independent assessment" depends "on the evidence before it and the data that are properly at its disposal." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985). See also Greenblatt v. City of Englewood, 26 N.J. Tax 41, 56 (Tax 2010) ("[a]n appropriate value and tax assessment, however, can only be deduced when there is sufficient substantial and competent evidence in the record to support that determination").

Here, the blurry pictures and testimony allow the court to find that the house was damaged, and because it is undisputed that the house was not habitable due to extensive water damage, the court is inclined to conclude that the value allocated to the house could be further reduced. However, it is restrained in this regard because plaintiffs' only proffer of value is the fact that the Zoning Board approved the home's demolition and the house was demolished post-assessment. As explained above, this is not cognizable cogent evidence which could provide the court a basis for concluding what the value reduction should be in dollars. The court's sympathy for the plaintiffs' loss is not a reason to provide an arbitrary reduction to the assessment, nor can it obviate the need for, or substitute as, qualitative evidence of value. The court is therefore constrained to affirm the County Board judgment.

CONCLUSION

For the aforementioned reasons, the court finds that plaintiffs have failed to produce sufficient evidence to overcome the presumptive validity of the judgment of the County Board. An Order and final judgment affirming the assessment will accompany this opinion.

Very truly yours,



Hon. Mala Sundar, J.T.C.