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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE



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BY FIRST-CLASS AND ELECTRONIC MAIL

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Re: Gentile v. Borough of Interlaken
Block 30, Lot 22.07 (50 Wickapecko Drive)
Docket No. 013021-2013

Dear Mr. Gentile and Ms. DeSimone:

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 2013 on the above captioned property ("Subject"), located in defendant Borough of Interlaken ("Borough"). The affirmed, and thus, contested assessment, is as follows:

Land:	\$ 263,300
Improvements:	<u>\$ 162,000</u>
Total:	\$ 425,300

*

The Chapter 123 ratio applicable to tax year 2013 was 80.89% with an upper limit of 93.05% and a lower limit of 68.76%.¹

PROCEEDINGS

Plaintiff provided his testimony and submitted into evidence the following: (i) photographs of the Subject's exterior and interior; (ii) photographs of some homes in the Borough and certain locations within the Borough; (iii) exterior photographs of his comparable sales; (iv) a land survey map of the Subject; (v) computer printouts of four comparable sales and their respective property record cards; and (vi) map printouts indicating the driving distance of the comparable sales to the Subject.

Plaintiff maintained that the averaged per square foot ("PSF") sale price of the four comparables, all of which were located in the neighboring township of Ocean, was indicative of the fair market value of the Subject, after a 5% adjustment for location. He thus requested the court find the Subject's true value as \$383,000.

The Borough moved to dismiss the complaint under R. 4:37-2. It asserted that plaintiff has failed to overcome the presumptive correctness of the County Board judgment.

The court finds the comparable sales from the neighboring municipality of Ocean are not persuasive evidence of the Subject's fair market value because there was no evidence that the real estate market for single family homes in the Borough is the same or very similar to such market in Ocean. Further, the comparable sales were dissimilar from the Subject in lot size and quality of location. Consequently, plaintiff's method of averaging the sales prices of those comparables and applying the averaged PSF price to the Subject as indicative of the Subject's value is not credible. Therefore, the County Board judgment is affirmed.

¹ The Borough's counsel claimed that the Borough underwent a municipal-wide revaluation in 2013.

FACTS

Built in 1977, the Subject is comprised of a 1.068 acre lot, and is improved by a one-story ranch-style single-family residential home. Plaintiff acknowledged that the Subject has a larger lot compared to most in the Borough. Nonetheless, he testified that it cannot be fully accessed because it is “bounded on every side by other residential lots,” the lot is heavily wooded, and there is a municipal easement between the Subject and his neighbor to the north.

The residence consists of a living room, kitchen, three bedrooms and two bathrooms, and a gross living area (“GLA”) of 2,032 SF.² The Subject has a driveway with an attached garage, and an unfinished basement.

The street on which the Subject is located is a main thoroughfare with heavy traffic but prohibits access to trucks over four tons. The speed limit is 35 miles-per-hour. There is no street parking allowed. The sign that prohibits street parking is posted on plaintiff’s front yard. The Subject is located on the western side of the Borough and in close proximity to the neighboring township of Ocean.³

Plaintiff used four comparable sales in Ocean as indicators of the Subject’s fair market value. He relied on the property record card of each comparable sale as he did not (and stated no one, including the assessor could,) inspect the interiors. They were proximate to the Subject distance-wise, and were one-story, ranch-styled, single-family residences. These were:

Location	Sale Date	Price	Lot Size	GLA	Yr Built	Description
4 Joda Rd	04/25/12	\$380,000	110'x150'	2,014 SF	1956	3-bed; 2-bath
7 Joda Rd	07/16/12	\$385,000	100'x172'	1,876 SF	1960	3-bed; 2-bath
602 Lakeview Ave	02/15/12	\$368,000	125'x104'	1,816 SF	1963	3-bed; 3-bath
210 Lakeview Ave	08/31/12	\$360,000	100'x85'	1,880 SF	1963	2-bed; 2-bath

² The Borough’s property record card indicates that the Subject is 2,032 SF.

³ The tax map illustrate that properties located directly across the street from the Subject are properties in Ocean Township. Plaintiff testified that it may only take “six steps” from the Subject to reach Ocean Township.

Plaintiff stated that he did not rely on any sales within the Borough because the sale prices were “not within [his] range” since the sale prices were all between \$600,000 to \$800,000. He did not provide the court with the facts of any of these alleged sales which he claimed to have considered and rejected. He noted that all homes in the Borough were in the secluded elite portion, colonial style with gated or private driveways, in private residential neighborhoods with ample street parking, lake fronts or lake views, residential thoroughfare with a 25-mile-per-hour speed limit. He stated that he felt that the Subject’s location and characteristics were very similar to homes in Ocean, and anyone looking at his house would think it is located in Ocean. He however conceded that he would not market his house as being one in Ocean.

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). Evidence must be “based on ‘sound theory and objective data’ rather than on mere wishful thinking.” Id. at 376.

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 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

The sales comparison approach is 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 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 297 (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 297 (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").

Plaintiff credibly testified that he felt his home was more aligned or comparable to homes in Ocean because the Subject was located on a busy thoroughfare unlike the more secluded, thus, more elite, homes in the Borough's interior. Nonetheless, the court is not persuaded that only sales in Ocean are reflective of the Subject's value.

First, plaintiff was unable to objectively establish that the single-family residential market in Ocean was similar to that of the Borough such that buyers would not distinguish one or the other when considering purchase of a home. The Borough was a small neighborhood with a population of 900. Plaintiff did not assert Ocean to be so. The two municipalities did not share a school district. Tax rates for 2013 tax year were different. The average ratios were different.⁴

Plaintiff also conceded that the Borough had an elite reputation and that he would market his home as in the Borough (factually but also as a marketing factor to attract potential buyers). When asked by the court what he meant by stating that the sales of homes in the Borough he alleged to have rejected were not within “his range,” he said he meant that the sale prices were higher than the Subject’s assessment. This explanation is not a reasonable basis to automatically reject such sales without more analysis.⁵ Indeed, if comparable homes in semi-private residential locations in Ocean Township sold for considerably less for what plaintiff alleged were much smaller but similarly well-situated homes in the Borough, there is a strong inference that the markets of these two neighborhoods are not comparable at all, which would render the sale prices in Ocean as unreliable indicators of the Subject’s true market value.

Second, the Ocean comparables in any event, were all older than the Subject. None had a lot as big as the Subject. They were all located in semi-private residential areas unlike the Subject, which plaintiff testified as being on a main thoroughfare and burdened with heavy traffic. Therefore, their probative value as indication of the Subject’s is not persuasive.

⁴ The Chapter 123 ratios for Ocean for tax year 2013 was 93.98% with a lower limit of 79.88% and an upper limit of 108.08%. Whereas for the Borough it was 80.89% with the lower limit as 68.76% and an upper limit of 93.02% .

⁵ The court was presented with no credible evidence with respect to the similarities or dissimilarities of the sales in the Borough because neither party provided any material proof to assist the court in this regard. Plaintiff conceded during the court’s questioning that utilizing the sale prices from the Borough would not support a reduction of the Subject’s 2013 assessment.

Third, and as a result of the above, plaintiff's method of using the averaged PSF price of the comparables' sale prices with a 5% location adjustment is also unpersuasive.⁶ Unless the comparables are almost identical properties such that the difference of the PSF sale price is attributable to a single dissimilarity (generally, the GLA since the PSF is computed by dividing the sale price by the GLA, with the lot areas also being the same or almost similar), the reliability of the averaging methodology is suspect. See e.g., *Wedgewood Knolls Condominium Ass'n v. Borough of West Paterson*, 11 N.J. Tax 514, 522-523 (Tax 1991) (averaging the unadjusted sale prices of comparable sales "presupposes a fungibility within each category of unit model . . . i.e., that each unit model is identical in all respects to every other unit model" and where such fungibility is not proven to exist, the arithmetical averaging of sales prices is an improper and incorrect appraisal methodology). The deficiency in plaintiff's methodology is even more glaring when considering his testimony that alleged sales of allegedly smaller sized properties in the Borough were about \$300,000 to \$400,000 more than sale prices of the comparables in Ocean Township. Valuation of real property is not a mere mathematical exercise.

CONCLUSION

For the foregoing reasons, the court finds that plaintiff has not overcome the presumptive correctness of the County Board's judgment. A final Order and Judgment affirming the assessment accompanies this memorandum opinion.

Very truly yours,



Mala Sundar, J.T.C.

⁶ The average PSF price of the four comparable sales equates to approximately \$197, which when multiplied by the Subject's square feet totals \$400,300 (rounded). A 5% negative adjustment for location would provide plaintiff his requested reduction to \$380,285.