NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY

Joshua D. Novin
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NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS

October 17, 2014

Ms. Juliet Michaud
303 Tichenor Avenue
South Orange, New Jersey 07079

Jill Daitch Rosenberg, Esq.
Wolff & Samson, PC
One Boland Drive
West Orange, New Jersey 07052

Re: Juliet Michaud v. South Orange Village Township
Block 2205, Lot 7
Docket No. 014055-2013

Dear Ms. Michaud and Ms. Rosenberg:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the 2013 assessment on plaintiff's single-family residence. For the reasons stated more fully below, the court affirms the 2013 assessment and dismisses plaintiff's complaint.

I. Procedural History and Factual Findings.

Juliet Michaud ("plaintiff") and her husband, James Michaud, are the owners of a single-family home located at 303 Tichenor Avenue in the Township of South Orange Village ("defendant" or "Township"), County of Essex and State of New Jersey. The lot size of plaintiff's property is 7,100 square feet (.16 acre). The property is located on the corner of

Tichenor Avenue and Montague Place. The home on the property fronts Tichenor Avenue, however the Township's assessment records identify it as 188 Montague Place. The subject corner contains a four-way stop, with a blinking traffic light. The property is located in the "village colonial area" of the Township. The property is designated on the Township's tax map as Block 2205, Lot 7 (the "subject property"). The subject property is located in the Township's RA-50 zone, which was identified as a single family residential zone, requiring a minimum lot area size of 7,500 square feet. For the 2013 tax year the subject property was assessed as follows:

Land:	196,800
Improvements:	217,200
Total	414,000

The average ratio of assessed to true value, commonly referred to as the Chapter 123 ratio, for the Township for the 2013 tax year was 88.83%. 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 $466,059.

Plaintiff filed a petition challenging the subject property's 2013 assessment before the Essex County Board of Taxation. On July 11, 2013, the Essex County Board of Taxation entered judgment affirming the assessment concluding that the "presumption of correctness not overturned."

Plaintiff filed a complaint with the Tax Court on September 12, 2013.[i] The defendant did not file a counterclaim. The matter was tried to conclusion on September 22, 2014. Three witnesses offered testimony at the time of trial: plaintiff's husband, James Michaud; an appraiser and certified tax assessor called as an expert by plaintiff; and an appraiser and certified tax assessor called as an expert by defendant. Both experts were called to provide opinion testimony

on the market value of the subject property. The parties stipulated to the qualifications of both expert witnesses, and the court accepted the stipulation.

As of the October 1, 2012 valuation date, plaintiff's appraiser concluded a market value for the subject property of $395,000, and defendant's appraiser concluded a market value for the subject property of $455,000. 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.

At the conclusion of the trial, defendant renewed its motion to dismiss plaintiff's complaint under R. 4:37-2(b) and plaintiff challenged the reliability of defendant's comparable sale one. The court reserved decision on both motions. For the reasons stated below, the court denies both motions. Thus, the court must now evaluate and weigh the evidence presented by the parties and decide the matter on its merits.

Based upon the testimony and evidence presented at trial, the court concludes that plaintiff's single-family home was constructed in or about 1922. The plaintiff's home is a red brick, two-story colonial-style home consisting of a living room, dining room, kitchen, office, three bedrooms, one and one-half bathrooms, an unfinished basement, an attached one-car garage and an enclosed porch. Renovations were undertaken to the bathrooms and kitchen in approximately 2004. Photographs of the subject property were introduced into evidence revealing a well-appointed house, containing finished hardwood flooring in many rooms, updated bathrooms and a kitchen with updated cabinetry, a granite countertop, and stainless steel appliances (range, microwave oven, dishwasher, refrigerator and sink).

Both experts found the subject property to be in good condition and stated that, based on current zoning requirements, the subject property's lot size does not meet current zoning

requirements. Therefore, both experts agreed that the subject property is a pre-existing, legal, non-conforming use. The experts disagreed on the gross living area of the home. Plaintiff's expert testified that the gross living area is 1,809 square feet, and defendant's expert testified that it is 1,820 square feet. The court concludes that this difference of 11 square feet is immaterial in arriving at the market value of the subject property.

James Michaud testified as a fact witness that he and his wife, Juliet Michaud, purchased the property in 2004, and that they have and continue to jointly own and occupy the property.[1]

II. Conclusions of Law.

A. Presumption of Correctness.

"Original 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). This 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). A taxpayer can only rebut the presumption by introducing "cogent evidence." Our Supreme Court has defined "cogent evidence" as evidence that is "definite, positive and certain in quality and quantity." Id. at 413 (quoting Aetna Life Ins. Co. v. Newark, 10 N.J. 99 (1952)). As Judge Kuskin observed in MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax 364, 374 (Tax 1998)(citing Powder Mill, I Assocs. v. Hamilton Township, 3 N.J. Tax 439 (Tax 1981), the "presumption is not simply an evidentiary presumption serving only as a mechanism to allocate the burden of proof. It is,

[1] During trial the court concluded that James Michaud was an "aggrieved taxpayer" as such term is defined under N.J.S.A. 54:3-21 and therefore, had standing to prosecute the appeal in this matter.

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."

Therefore, plaintiff bears the burden of presenting 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." Id. at 376. "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).

If, at the close of plaintiff's proofs, the court is presented with a motion to dismiss under R. 4:37-2(b), in evaluating whether plaintiff's evidence meets the "cogent evidence" standard, the court "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)). The evidence presented "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). If the court concludes that evidence sufficient to overcome the presumption of validity of the tax assessment has not been presented, judgment should be entered affirming the assessment. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992). Thus, 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.

Conversely, if the court concludes that a party's evidence raises a "debatable question" as to the validity of the assessment, the court must deny the R. 4:37-2(b) motion. At the conclusion

of the trial the court should then "proceed directly to weigh and evaluate all the evidence, and determine whether the plaintiff has demonstrated, by a preponderance of the evidence, that the assessment should be adjusted." Id. at 377-78. Thus, the court's obligation to "appraise the testimony, make a determination of true value and fix the assessment" only arises after the presumption has been overcome by a party presenting cogent evidence. Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982).

The court concludes, for the same reasons previously set forth on the record, that plaintiff has produced sufficient evidence to overcome the presumption of validity that attaches to the assessment. If accepted as true, the opinions of plaintiff's expert witness and the facts upon which he relied, raise debatable questions regarding the correctness of the assessment on the subject property. Therefore, defendant's motion to dismiss the complaint under R. 4:37-2(b) is denied.

B. Valuation.

However, the court's conclusion that the presumption of validity attaching to the tax assessment has been overcome, does not amount to the court finding that a property's 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 remain cognizant 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. v. City

of Passaic, supra, 100 N.J. at 413). Accordingly, the court will now turn to an evaluation and weighing of the evidence presented to decide if plaintiff has met the requisite burden of proof.

"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 has been described as a method which 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. A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market's reaction to comparable and competitive properties." Appraisal Institute, The Appraisal of Real Estate 377 (14th ed.2013). The sales comparison approach may be used to value all types of real property interests. The sales comparison approach involves a "comparative analysis of properties." Id. at 378. This analysis requires the appraiser 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. "For property types bought and sold regularly, the market approach often provides a supportable indication of market value. When data is available, this 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 plaintiff's property.

In this case, both experts relied on the sales comparison approach and used an adjustment grid to compare and adjust for quantitative and qualitative differences to derive a market value for the subject property.

1. Plaintiff's Expert's Valuation Approach.

Plaintiff's expert used sales of three single-family homes in the Township in arriving at his concluded value for the subject property.

Comparable sale one, located at 352 Tichenor Avenue, sold on August 30, 2012 for $450,000 or $220.91 per square foot. The home is a colonial cape cod style residence having a gross living area of 2,037 square feet. The lot size of comparable sale one is 5,271 square feet. The plaintiff's expert made a total of $28,900 in downward adjustments: a $5,000 downward adjustment for location; a $5,000 downward adjustment for an additional one-half bathroom; a $11,400 downward adjustment for gross living area; a $5,000 downward adjustment for the presence of a partial lavatory in the basement; and a $2,500 downward adjustment for the presence of a central air conditioning system.

Comparable sale two, located at 316 Academy Street, sold on February 17, 2012 for $410,000 or $235.90 per square foot. The home is a colonial style residence having a gross living area of 1,738. The lot size of comparable sale two is 5,227 square feet. The plaintiff's expert made a total of $4,450 in downward adjustments: a $5,000 downward adjustment for location; a $5,000 downward adjustment for an additional one-half bathroom; a $3,550 upward adjustment for gross living area; and a $2,000 upward adjustment for the lack of a fireplace.

Comparable sale three, located at 315 Radel Terrace, sold on December 16, 2011 for $387,500 or $207.00 per square foot. Plaintiff's expert testified that comparable sale three is a colonial style residence (a fact which was disputed by defendant), having a gross living area of 1,872 square feet. The lot size of comparable sale three is 5,489 square feet. The plaintiff's expert made a total of $15,650 in downward adjustments: a $5,000 downward adjustment for location; a $3,150 downward adjustment for gross living area; a $5,000 downward adjustment for a basement recreation room; and a $2,500 downward adjustment for the presence of a central air conditioning system.

Plaintiff's expert testified that he attributed more weight to comparable sales two and three, as he believed that they were more representative of the subject property.

2. Defendant's Expert's Valuation Approach

Similarly, defendant's expert used sales of three single-family homes in the Township in reaching his concluded value of the subject property.

Comparable sale one, located at 201 Coudert Place, sold on August 30, 2012 for $539,000 or $265.52 per square foot. The home is a colonial style single-family residence constructed in or about 1928, having a gross living area of 2,030 square feet. The lot size of comparable sale one is 8,100 square feet. The defendant's expert made a total of $53,600 in downward adjustments: a $5,000 downward adjustment for lot size; a $20,000 downward adjustment for room count; a $12,600 downward adjustment for gross living area; a $14,000 downward adjustment for a finished basement; and a $2,000 downward adjustment for a patio. The defendant's expert testified that a description of the property was contained on the multiple listing service ("MLS"), however it was not marketed for sale on the MLS. Instead, this comparable sale was marketed and offered exclusively for sale on the open market through a

local realtor's office. The defendant's expert testified that he researched this comparable sale and confirmed the details of the sale, the length of time the property was offered for sale, and how the property was marketed by the realtor's office that maintained the exclusive listing.

Comparable sale two, located at 256 Prospect Street, sold on May 24, 2012 for $437,500 or $233.08 per square foot. The home is a colonial style single-family residence constructed in or about 1924, having a gross living area of 1,877 square feet. The lot size of comparable sale two is 5,650 square feet. The defendant's expert made a total of $705 in upward adjustments: a $21,875 upward adjustment for location; a $7,250 upward adjustment for lot size; a $20,000 downward adjustment for room count; a $3,420 downward adjustment for gross living area; and a $5,000 downward adjustment for a two-car garage.

Comparable sale three, located at 352 Tichenor Avenue (the identical sale identified in plaintiff's expert report as comparable sale one), sold on August 30, 2012 for $450,000 or $220.91 per square foot. The home is a colonial cape style single-family residence constructed in 1947, having a gross living area of 2,037 square feet. The lot size of comparable sale three is 5,253 square feet. The defendant's expert made a total of $15,785 in downward adjustments: a $9,235 upward adjustment for lot size; a $5,000 downward adjustment for room count; a $13,020 downward adjustment for gross living area; a $2,000 downward adjustment for a porch; and a $5,000 downward adjustment for a central air conditioning system.

Defendant's expert testified that he gave equal weight to all of the comparable sales in arriving at his concluded value of the subject property.

3. Market Value.

The plaintiff did not object to the admission of defendant's appraisal report into evidence, however plaintiff challenged the reliability of defendant's comparable sale one. Plaintiff argued

that comparable sale one was not marketed on the MLS and therefore, did not accurately reflect market value, and therefore should be excluded from consideration. Since plaintiff was challenging the use of comparable sale one, plaintiff bore the burden to present evidence to the court that comparable sale one did not reflect "market value." The term "market value" has been defined as:

> [t]he most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

Appraisal Institute, The Appraisal of Real Estate 58 (14th ed.2013).

It is the burden of the party opposing consideration of the sale to "demonstrate with competent credible evidence that the sale does not reflect true market value." Greenblatt v. Englewood City, 26 N.J. Tax 41, 54 (Tax 2011). In this regard, the sole source of plaintiff's evidence was the opinion testimony of plaintiff's expert. Plaintiff's expert opined that because comparable sale one was not marketed on the MLS, it was "never exposed to the market." He further concluded that because the buyer resided outside the country and purchased the property for "cash", the buyer did not have an opportunity to negotiate the sales price. However, plaintiff's expert offered no support for his conclusions. Conversely, defendant's expert offered uncontroverted testimony that: comparable sale one was offered for sale and exposed to the open market, was actively marketed and exhibited to prospective buyers through an exclusive listing with a local New Jersey realtor; and that a description of comparable sale one with photographs was contained on the realtor's website for all interested buyers to examine. Therefore, this court concludes that the record contains insufficient "credible evidence" that defendant's comparable

sale one does not reflect true market value. Accordingly, the court denies plaintiff's motion to exclude defendant's comparable sale one.

4. Plaintiff's Adjustments.

a. Location.

Location was adjusted downward by plaintiff's expert on comparable sale one, two and three by $5,000. The only explanation offered in plaintiff's appraisal report for these adjustments was the notation that the comparable sales were "not on a traffic corner." Plaintiff's expert testified that he based his downward adjustment on his observation of two four-way stop signs on Tichenor Avenue. Since the comparable sales streets did not contain two four-way stop signs, the plaintiff's expert opined that a downward adjustment was warranted. However, plaintiff's expert admitted that he did not conduct a traffic study of the subject property's street, or the comparable sales streets. Plaintiff's expert could also not point to any market data or analysis to support his conclusion that a home located on the corner of a four-way stop would sell for less than a comparable and competitive home located on an interior lot. Therefore, plaintiff's expert's location adjustments were entirely subjective, and were not based on any established standard, study or data.

Plaintiff's expert further acknowledged that comparable sale two was located in the RB zoning district, which was identified as a two-family residential zoning district. Plaintiff's expert admitted that a number of two-family homes are located on the street in close proximity to comparable sale two, however he was uncertain how many homes on the street were two-family homes. Plaintiff's expert conceded that the highest and best use of comparable sale two was as a two-family home, and not as a single-family home.

During cross-examination plaintiff's expert admitted that a municipal football field and two athletic fields are located immediately behind the homes across the street from comparable sale three. Access to the parking lot servicing the municipal fields is provided by a driveway located at the intersection of comparable sale three's street and Garfield Place. Plaintiff's expert further admitted that the athletic fields are regularly used by children in the Township, and that there would be increased vehicular travel on comparable sale three's street to gain access to the parking lot servicing those fields. Despite these material differences between the subject property and comparable sale three, plaintiff's expert made no upward location adjustment.

b. Time.

Plaintiff's comparable sales two and three occurred approximately 7½ months and 9½ months prior to the October 1, 2012 valuation date. Plaintiff's expert's explained that he elected to make no adjustments for time because, in his opinion, the real estate market in the Township "was flat" between 2011 and October 1, 2012. However, plaintiff's expert failed to provide and could not identify any market analysis, data or other means to support his conclusion that the market "was flat" during that time period.

c. Lot size.

Plaintiff's expert made no upward adjustments to account for the differences in lot size between the subject property and the comparable sales, despite each comparable sale having lot sizes, respectively, 25.7%, 26.4% and 22.7% smaller than the subject property's lot size. Plaintiff's expert's opined that any adjustment to lot size would be "negligible." However, plaintiff's expert's conclusion was not supported by any market data or analysis. The plaintiff's expert admitted that he did not conduct any study or analysis of land sales in the Township to support his conclusion that a lot size adjustment was not warranted.

d. Gross living area.

Plaintiff's expert testified that, in his opinion, no paired sales were available. Therefore, plaintiff's expert used Volume II of the New Jersey Real Property Assessors Building Classifications and Specifications Replacement Cost Schedules to calculate his, per square foot, gross living area adjustments. These schedules, contained in the New Jersey Real Property Assessors Manual, enable assessors to estimate uniform replacement costs for buildings of similar type and construction. Plaintiff's expert's testified that he used Section R-17 of the schedules, titled "Residence, Superior Quality Workmanship" to calculate his adjustments.

The use of cost analysis in the appraisal process, such as depreciated building cost, can be an effective tool, however the appraiser must provide "market support for cost-related adjustments because cost and value are not necessarily synonymous." Appraisal Institute, The Appraisal of Real Estate 401 (14th ed.2013). In utilizing cost analysis, the appraiser must be mindful that the replacement cost of an improvement does not always equate to an increase in the value of a property. As the Appraisal Institute cautions, the "cost of an improvement does not always result in an equal increase in value for the property as a whole." Id. at 401-402. It is the market, not replacement cost calculations that dictate "the value contribution of individual components to the value of the whole." Id. at 401.

Plaintiff's appraisal report identifies the subject property as being in "good" condition, however plaintiff's expert offered no facts, reasoning, or explanation why he relied on the R-17 "Superior Quality Workmanship" schedule to compute his replacement cost gross living area adjustments. The court's examination of Volume II of the New Jersey Real Property Assessors Building Classifications and Specifications Replacement Cost Schedules revealed twelve separate single-family dwelling building classifications, ranging from "Low Quality Dwelling"

to "Highest Estate Quality Dwellings." Each building classification contains its own distinct criteria, standards and "base specifications" for inclusion in the class. More importantly, the base replacement cost per square foot factors vary greatly between each building class designation. Thus, using an "Above Standard Quality" classification for a property would result in a lower base replacement cost per square foot value than would using a "High Quality" classification.

Additionally, the plaintiff's expert provided no market support for his replacement cost related gross living area adjustments. The market, not replacement cost calculations, dictate "the value contribution of individual components to the value of the whole." Appraisal Institute, The Appraisal of Real Estate 401 (14th ed.2013). The appraiser's adjustments "must have a foundation obtained from the market, and where appropriate, supported by cost manuals." Greenblatt v. Englewood City, 26 N.J. Tax 41, 55 (NJ Tax 2011). Plaintiff's expert did not offer any explanation of the criteria and standards that the subject property possessed which would qualify it under the "Superior Quality Workmanship" classification.

This court accepted the parties' stipulation of the qualifications of the experts in real property valuation thereby permitting each expert to offer opinion testimony. However, the court must be mindful of the guidelines governing the admissibility of an expert's opinion testimony. "Expert testimony must be offered by one who is 'qualified as an expert by knowledge, skill, experience, training, or education' to offer a 'scientific, technical, or... specialized' opinion that will assist the trier of fact…[T]he opinion must be based on facts or data of the type identified by and found acceptable under N.J.R.E. 703." Pomerantz Paper Corp. v. New Community Corp., 207 N.J. 344, 372 (2011). When an expert "offers an opinion without providing specific underlying reasons…he ceases to be an aid to the trier of fact." Jimenez v.

GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996). An expert witness must "give the why and wherefore of his expert opinion, not just a mere conclusion." Id. at 540. In this case, plaintiff's expert provided no explanation supporting his use of the "Superior Quality Workmanship" building classification for the subject property, which was the heart of his per square foot replacement cost values and thus, his gross living area adjustments.

e. Design.

Plaintiff's comparable sale two has a one car built-in garage located below grade level and beneath the home. Plaintiff's comparable sale three has a garage built directly into the first floor of the home, which defendant offered is known as a "Zaymore colonial' style home. The subject property's garage is located at grade level, is attached to the home and no living area is located above it. Despite these material differences, plaintiff's expert opined that no adjustments were warranted. The court does not find plaintiff's opinion credible on this issue. Comparable sale two's presence of a garage below grade level and beneath the home and comparable sale three's presence of an unheated garage with living areas above it represent striking disparities between the subject property and the comparable sales. Plaintiff's expert offered no facts, data or support for his conclusion that adjustments were not warranted for these differences.

In employing the sales comparison approach, the appraiser must "[a]bove all…be careful to ensure that mathematical adjustments reflect the reactions of market participants." Appraisal Institute, The Appraisal of Real Estate 398 (14th ed.2013). An appraiser must not only provide support for the appraiser's opinion, but also must apply the quantitative adjustments in a uniform manner. "The number of adjustments made, the failure of an appraiser to support and justify adjustments, the nature of the differences between the subject property and each comparable sale…are all factors of an adjustment that makes the comparable sales data meaningful for

purposes of establishing the value of the subject property." Little Egg Harbor Twp. v. Bonsangue, 316 N.J. Super. 271, 284 (App. Div. 1998)(quoting Schmertz v. Dover Township, 4 N.J. Tax 145, 150 (Tax 1982). The value, weight and the "probative utility of an expert's opinion stands or falls on the facts and reasoning offered in its support." Id. at 284 (citing Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 458 (Tax 1980), aff'd, 180 N.J. Super. 366 (App. Div. 1981), certif. denied, 88 N.J. 495 (1981).

Plaintiff's comparable sale two is located in a two-family zoning district, lacks an updated kitchen, has a built-in garage located beneath the home, and has a lot size 26.4% smaller than the subject property. Comparable sale three is located across the street from a municipal football field and two athletic fields, is located on a street which, at its intersection, has a driveway providing vehicular access to the parking lot for the athletic fields, has living areas in the home above an unheated garage, and has a lot size 22.7% smaller than the subject property.

Additionally, the gross living area adjustments made by plaintiff's expert to comparable sales one, two and three lacked the factual support and market data to render the per square foot gross living area adjustments meaningful.

Therefore, the court concludes that although the sales comparison approach is the most appropriate method to value the subject property, the testimony and analysis offered by plaintiff's expert lacked the necessary factual basis, market support and meaningful data to assist the trier of fact in determining the true value for the subject property.

5. Defendant's Adjustments.

a. Lot size.

Defendant's expert testified that, in his opinion, it was "relevant to adjust…for differences in excess land", because the use of the subject property, comparable sale two and

comparable sale three are pre-existing, legal, non-conforming uses under the current zoning requirements. Therefore, in his opinion, excess land was an "amenity that is desirable and measurable" and should be adjusted for. While the court is inclined to agree with the conclusion reached by defendant's expert, the court is constrained to point out that defendant's expert failed to provide the necessary data to support his conclusion. Defendant's expert testified that he adjusted lot size based on his "analysis of land sales" in the Township of South Orange Village "during the sampling period." He further proffered that the "range of land sales" in the Township of South Orange Village were $5.00 to $13.00 per square foot. However, defendant's expert provided no explanation of the time period encompassing his "sampling period", nor did he provide the court, or append to the appraisal report, the sales data supporting his conclusion that a $5.00 per square foot lot size adjustment was reasonable under the circumstances. Therefore, although defendant's expert referenced studies and market analyses, he did not testify to or provide the court with the data supporting his conclusion.

b. Total Living Area.

Defendant's expert adjusted for differences in total living area at a rate of $60.00 per square foot, resulting in downward adjustments of $12,600, $3,420, and $13,020 in the respective comparable sales. Defendant's expert testified that he analyzed the Marshall and Swift cost tables, referenced the "appropriate classification for the subject property", identified the property type in those tables, applied cost factors relative to the area on the first and second floors of the subject property and applied that result to a cost table for depreciation. He further proffered that the Marshall and Swift calculator then produced a range of value for the total living area component, and that $60.00 was in the "median part of the range." The process employed by defendant's expert in reaching his concluded value per square foot seems to adhere

to the Marshall and Swift valuation methodology. However, the court observes that defendant's expert failed to identify the property class and building type used by defendant's expert to compute the cost factor. The Marshall and Swift tables, affixed as an exhibit to defendant's appraisal report, reflect four separate and distinct classes of single-family residences and seven sub-categories of building type within each class. It is the selection of a particular building class, and property type within each class, which defines the base factor which is to be applied to the first and second floor area multipliers which ultimately produce a per square foot value. The court cannot conclude whether the adjustments undertaken by defendant's expert are credible without information supporting the class and building type used by defendant's expert in his analysis.

Similarly, defendant's expert adjusted for basement finishes, at a rate of $20.00 per square foot, resulting in a downward adjustment in comparable sale one of $14,000. Defendant's expert again testified about the process he followed using the Marshall and Swift cost tables to produce the $20.00 per square foot value. The Marshall and Swift cost table contains only one building classification for a basement, "CDS", therefore, the court is able to ascertain the classification used by defendant's expert for purposes of his computation. However, the Marshall and Swift cost table contains four sub-categories of "type" within the basement classification, ranging from "Unfinished" to "Finished, high-value." The replacement cost factors vary greatly between the type of basement finish. Once again, it is the selection of the basement finish type which will define the base factor to be applied in producing a per square foot value. The court cannot conclude whether the basement finish adjustments are credible without facts and information supporting the basement type used by defendant's expert in his analysis.

c. Room Count.

Defendant's expert made adjustments for differences in the number of bathrooms located in the subject property and the comparable sales. The defendant's expert testified that the presence of one additional full bathroom, resulted in downward adjustments of $20,000 to comparable sale one and comparable sale two. He further testified that he made a $5,000 downward adjustment for the presence of an additional one-half bathroom in comparable sale three. Defendant's expert testified that his experience as an assessor, in annually analyzing building permits affords him access to "the cost" of types of "improvements that are assessable."

The defendant's expert provided no data or analysis of the market supporting his conclusion that a $20,000 downward adjustment for the presence of a full bathroom was reasonable. The appraiser's adjustments "must have a foundation obtained from the market, and where appropriate, supported by cost manuals." Greenblatt v. Englewood City, 26 N.J. Tax 41, 55 (NJ Tax 2011). The defendant's expert's opinion that his experience in reviewing building permits and his familiarity with "the cost" of an improvement provides him with the ability to translate cost figures into market value was unconvincing. It is the market, not a replacement cost calculation that dictates the "value contribution of individual components to the value of the whole." Appraisal Institute, The Appraisal of Real Estate 401 (14th ed.2013). The cost of an improvement alone, without the data supporting the resulting increase in the market value of a property, does not provide the court with the necessary support to evaluate the validity of the adjustment.

d. Location.

Defendant's expert made a $5,000 downward location adjustment to comparable sale two. The sales comparison grid of defendant's expert's appraisal report contains the notation

"Busy Street" and a statement that comparable sale two's street is "a heavily trafficked thoroughfare." Defendant's expert testified that he made the $5,000 downward adjustment because the street contains "double yellow lines" and he opined that the "area is inferior to the subject." He testified that the adjustment was based on his "experience with similar traffic streets" and his review of the Township's property record cards, which reflected a 5% downward adjustment for homes located on that street. However, similar to plaintiff's expert, defendant's expert did not conduct a traffic study of the subject property's street, or the streets where the comparable sales were located. Defendant's expert did not identify any market data or analysis to support his conclusion that a home located on a street in the Township with double yellow lines would sell for less than a comparable and competitive home located on a street without double yellow lines.

Therefore, for the same reasons the court concluded plaintiff's expert's testimony was flawed, the testimony and analysis offered by defendant's expert lacks the necessary factual basis, market support and meaningful data to assist the trier of fact in determining the true value of the subject property.

C. The Glen Wall Dilemma.

Our Supreme Court has long recognized that "[t]he Tax Court has not only the right, but the duty 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). See also Samuel Hird & Sons, Inc. v. Garfield, 87 N.J. Super. 65 (App. Div. 1965).

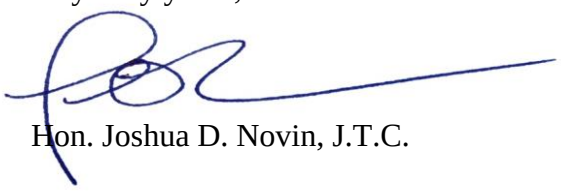
Therefore, the court is faced with the responsibility of applying its own judgment to determine the true market value of the subject property. To enable the court to make this

independent finding of true value, credible and competent evidence must be adduced in the trial record. However, the lack of factual, statistical and analytical support for the adjustments undertaken in this matter clouds the resulting experts' opinions of value of the subject property. As Judge Andrew observed, "[w]hile this court has a certain degree of knowledge and expertise in local property tax matters…it cannot legitimately review the adjustment process…and arrive at an informed determination." WCI-Westinghouse, Inc. v. Township of Edison, 7 N.J. Tax 610, 622 (Tax 1985), aff'd, 9 N.J. Tax 86 (App. Div. 1986). 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 appraisal reports and experts testimony, the record contains insufficient credible evidence on which this court can make an independent determination of 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. Additionally, the court further concludes that defendant has failed to provide credible and competent evidence establishing the true value of the subject property. Therefore, the court directs the Clerk of the Tax Court to dismiss plaintiff's complaint in this matter.

Very truly yours,



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

[i] The Tax Court's jurisdiction in this matter, under N.J.S.A. 54:51A-9, was not raised by defendant as a defense to plaintiff's cause of action prior to, or at trial. However, the court is mindful of the principle that litigants cannot

agree to confer jurisdiction on a court which lacks the statutory authority to hear a matter. Van Winkle v. Rutherford Borough, 12 N.J. Tax 290 (Tax 1992). The court also recognizes that our Supreme Court has long held that statutes of limitation in taxing matters are to be strictly construed. F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418 (1985). N.J.S.A. 54:51A-9 provides, in part, that "a complaint seeking review of adjudication or judgment of the county board of taxation shall be filed within 45 days of the service of the judgment." The "45-day time limitation begins to run from the date the county board's judgment is served upon the party filing the appeal." Pleasantville City v. California Apartments Associates, 4 N.J. Tax 519 (Tax 1982)(citing Evesham v. Nye, 3 N.J. Tax 183 (Tax 1981)). Thus, the operative date for purposes of calculating the 45-day time period within which a complaint must be filed with the Tax Court is the "date of service of the decision or notice of the action…" R. 8:4-2(a). If notice of an action is mailed by ordinary mail, then the "time period within which a complaint for review may be filed shall be extended pursuant to R. 1:3-3." Under R. 1:3-3 when "service of "notice…is made by ordinary mail, and a rule or court order allows the party served a period of time after the service thereof within which to take some action, 3 days shall be added to the period." In this matter, the Essex County Board of Taxation's memorandum of judgment was mailed on July 26, 2013. On September 12, 2013, the Tax Court received a letter from plaintiff dated September 5, 2013 stating that she was "filing a complaint on the judgment of my Petition of Appeal." On September 19, 2014, the Tax Court Management Office issued a deficiency notice to plaintiff and supplied plaintiff with a "complaint package." The completed complaint and case information statement were subsequently received by the Tax Court and were deemed filed as of the September 12, 2013 initial filing date. If the 45-day period was calculated from the July 26, 2013 date of mailing, the time limitation period for plaintiff to file a complaint with the Tax Court in this matter would have expired on September 9, 2013. However, because the Essex County Board of Taxation's memorandum of judgment was mailed by ordinary mail, applying the holding in Pleasantville City, supra, 4 N.J. Tax 519 (Tax 1982), and the provisions of R. 1:3-3 and R. 8:4-2(b), a 3-day time period shall be added, thereby affording plaintiff until September 12, 2013 to file the appeal in this matter. Accordingly, the court concludes that it possesses the requisite jurisdiction over the matter under N.J.S.A. 54:51A-9.