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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: William G. Orpin, Jr. v. Township of Monroe
Block 62, Lot 6.6
Docket No. 014714-2014

Dear Mr. Orpin and Counsel:

This letter constitutes the court's opinion following trial in the above-captioned matter involving plaintiff owner's challenge to the 2014 local property assessment on the above captioned property ("Subject") located in defendant township ("Township"). The Subject is vacant land, zoned for residential purposes, with no water or sewer connection. Pursuant to a district-wide revaluation (which renders the Chapter 123 ratio inapplicable), it was assessed at $195,300 as compared to its 2013 assessment of $58,900. The **Middlesex** County Board of Taxation ("County Board") reduced the 2014 assessment to $155,000.

*

Plaintiff maintains that Subject's fair market value is somewhere between $115,000 (the lowered listing price for the property in 2013) to $125,000, however, must be reduced by the potential sewer connection costs. According to him, buyers are unwilling to purchase the Subject, which has been on and off the market since 2007, because plaintiff is unable to provide them with a realistic sewer connection cost. This is due to the fact that the Township has refused to provide him with the correct amount of reimbursement payable to developers who have expended monies to make the sewer connection available. Yet the Township allegedly provides an estimate of about $120,000 to potential buyers based on a 2006 estimate, even though the sewer and water connection fees according to the Township's ordinance is about $2,900 and some reimbursements are not even owed since the Subject never connected to the water or sewer. Plaintiff maintains that because of this, and the fact that there is a deed restriction requiring a sewer connection before any improvement can be made, the Subject is worthless.

The Township, which had filed a counterclaim appealing the County Board's reduction, argues that (i) the complaint should be dismissed under N.J.S.A. 54:3-27 for failure to pay municipal charges as of the date the complaint was filed, those charges being around $1,200 owed in connection with plaintiff's 2006 preliminary application for water and sewer connection; (ii) the Township did provide plaintiff with itemized explanation of the above charges; (iii) plaintiff's disagreement with, and non-payment of the same does not render the Subject valueless; and (iv) plaintiff did not provide any legally cognizable comparable sales to refute the Subject's value as set by the County Board's judgment. It therefore moved to dismiss the complaint for failure to overcome the presumptive correctness of the assessment. It also withdrew its counterclaim on the record.

For the reasons explained below, the court finds that plaintiff's dispute with the Township as to the legality and payment of the past dues of $1,200 and the Township's recalcitrance to provide information on developer-cost reimbursement does not equate to a value-impacting impediment. As of the valuation date there was an ability to connect to a sewer facility, therefore, compliance with the deed restriction was not impossible, which in turn, does not render the deed restriction a value-impacting impediment. Even if the court were to deem the Township's refusal to provide information of the Subject's current pro-rata share of the developer-cost reimbursement as a value-impacting factor, plaintiff has failed to provide competent evidence establishing the Subject's true value. Therefore, the court affirms the judgment of the County Board.

FACTS

Prior to a subdivision, the Subject was part of the property known as Block 62, Lot 6.03, located on Schoolhouse Road, measuring about 1.79 acres. It was improved with one house where plaintiff resided until its sale in 2009. The house was not connected to any sewer line but was serviced by a septic tank.

In early March of 2006, plaintiff sought a minor residential subdivision so he could create two single-family residential lots and build another house on the vacant lot for his family. At the same time, plaintiff also applied for one new water and two new sewer connections for which he paid $500 as application fees.

By a March 16, 2006 email, in response to a question on the "status of sanitary sewers" in front of plaintiff's house, an employee of the Township's Municipal Utility Authority ("MUA") noted that the nearest sewer was downhill about 270 feet from plaintiff's house, there were none uphill, and that a property developer, Renaissance Properties, would run the sewers uphill "when

and if" it developed certain vacant land (at the corner of Route 522 and Schoolhouse Road). If so done, plaintiff's share of reimbursing this developer for the sewer costs would be his pro-rata share, else it would be 100% because the Subject would be the only unit on the sewer connection line. The email concluded that since plaintiff's subdivision application was "based on tying into 'future sewers by others,'" it could not be approved.

Apparently on or about March 20, 2006, the Township sent a letter to plaintiff that sewer improvements were required and that the "Board recommended denial for lack of service."[1]

Plaintiff's subdivision request was approved by the Township's Planning Board by a May 2006 resolution, formalized in June 2006. This created the Subject as Lot 6.06 (sometimes referred to as Lot 6.6) and Lot 6.05 (which was improved with plaintiff's house).

On October 16, 2006, a Township engineer asked plaintiff to revise or re-submit his preliminary application for water and sewer connections for proposed Lots 6.05 and 6.06. The letter stated that another developer was going to install a sanitary sewer which would also service the Subject, and it was his understanding that plaintiff would wait for the other developer to extend the sewers and "tie in upon" the same on its completion. The letter advised plaintiff that he would be required to reimburse the other developer for his "fair share" of using a portion of the sewer line plus his "fair share contribution to projects downstream previously constructed, which made sewer service and capacity available" for plaintiff's subdivided lot. The letter listed the eight such projects totaling $104,829 (the eighth project, #S991 Schoolhouse Road being estimated as "roughly" $68,000). In addition, plaintiff would have to pay connection fees for water (to one unit) and sewer (to two units) of $2,783 and $5,370 respectively, and certain other

[1] This was one of the line items in the Township's Utility Department's February 22, 2011 letter to plaintiff which provided a breakdown of services it provided in connection with plaintiff's application for sewer connection from March 7, 2006 to September 21, 2007 (and for unbilled services since September 2007 to February 2011). Thus it is unclear whether the denial was for the subdivision or the utility application.

water charges. These fees plus the proposed reimbursements totaled $115,233.85. The letter asked plaintiff to revise his "plan to indicate that sewers are to be constructed" under the project "#S991" and that until that project was "bonded" plaintiff's "application" could not be approved, therefore, he would have to obtain extension of planning/zoning approvals.

On May 24, 2007, the Planning Board re-affirmed its June 2006 subdivision approval because the 2006 approval was not timely filed with the County Record Officer. The Planning Board required plaintiff to include two deed restrictions for the Subject. One was that there be an acknowledgement that the Subject as created by grant of a minor subdivision. The other was that the property owners "agree to and shall have a functioning sewer connection to the . . . Township [MUA] sewer line prior to the issuance of a building permit for the new construction contemplated by the" subdivision. These restrictions were accordingly included sometime in September 2007.

Plaintiff claimed that he met with continual obstruction from the Township as to utilities (water and sewer) connection for the Subject. Having abandoned his idea to build a home on the Subject for his family due to certain family events, he decided to sell the Subject once he learned that the Township had denied his water and sewer connection application in 2006. He had listed the Subject for sale with a few brokers. In 2007, he asked for $289,000 although it appraised for $340,000 or so because he factored in the various impediments to clearing the Subject for development, namely, the Township's requirement for a driveway 25-feet wide and 350-feet deep; a clearance of 200 feet for the driveway; demolition of a dilapidated shed; and removal of three cement slabs.[2] He stated that four potential buyers walked away due to the lack of water

[2] Plaintiff was employed as a loan office for a mortgage broker and in this capacity reviewed and signed off on appraisals for financing or re-financing for FHA mortgages

and sewer connectibility. He took the Subject off the market in 2008 and did not re-list it for two years or so due to the decline in the housing market. In the meantime, in 2009, he sold his house located on Lot 6.05. He stated that the new home owners obtained a connection to a public sewer line which was, by this time, in front of the house. Apparently, there had been residential development post-2006 subdivision of plaintiff's property which extended sewers proximate to Lots 6.05 and 6.06 (the Subject).

In 2012, plaintiff re-listed the Subject for $189,000 and then lowered it to $169,000. In 2013 (relevant to tax year 2014), when the Subject's asking price was $147,000, he had a potential buyer. In an August 14, 2013 e-mail exchange, the buyer's attorney stated that the buyer was "advised [by the Township] that it will cost between $90,000 to $125,000 to connect to water and sewer." Plaintiff's attorney forwarded the e-mail with a note that the Township had advised plaintiff's counsel that plaintiff had an "escrow deficit of $1,273" and if that was paid, the Township would give an estimate for the sewer/water connection costs. To this, plaintiff responded that the buyer should deposit $35,000 (which plaintiff estimated was the correct connection fee plus construction costs), and if the combined water/sewer actual costs exceeded this amount, the buyer could cancel the sale. The offer was rejected by the buyer since $35,000 was nowhere close to the $125,000 estimate conveyed by the Township.[3]

In 2014, plaintiff, his relator, and his attorney made OPRA requests regarding the Subject, and also why the builder of the #S991 Schoolhouse Road project was allowed a 50-year

[3] The Subject is still being offered for sale. In August 2014, the Subject was listed at $115,300 which was after a rebate of "50% building cost rebate up to $160,000" or $80,000. This was "in lieu of discount from appraised value and/or transfer of prepaid escrows [of] $7,000" (the $7,000 escrow is what plaintiff has paid the Township for certain other building approvals which independent of the water/sewer connection approvals). There were no offers in response. Plaintiff stated that he is currently asking $142,000 less $7,000 in escrow and has a verbal offer of $108,000 (inclusive of realtor's 6% commission) from the realtor's brother who is on the Planning Board. His letter to the Township's expert (in connection with the Township's counterclaim) of January 23, 2015 stated that the Subject was listed at $167,000 with one offer to purchase at $135,000 but which was withdrawn due to the $100,000 estimate for water and sewer connection costs.

recovery period for its sewer costs, via reimbursements from home owners, while other builders were only given a 10-year window. By the first letter of August 7, 2014, the Township provided an itemization of a "past due project account" of $1,237.07 (after deducting $500 paid by plaintiff in March 2006) as well as the October 16, 2006 letter (see above). The itemization read similar to an attorney's billing statement, i.e., billable hours at $80.40 per hour, except that it did not identify the nature of the service other than to list under the title "Job," the letter "R" (presumably meaning "review"). There were multiple entries for the same date pertaining to "sewer" or to "sewer" and "water." The Township asked plaintiff to pay the $1,237 plus another $250, after which it would provide him an updated water and sewer connection fees and reimbursements. It noted that "several of the listed 2006 reimbursements are no longer active" therefore need not be reimbursed if the Subject was to be improved. By another letter dated August 29, 2014, the Township reiterated that unless plaintiff paid the past dues the Township would not calculate or provide him "new cost estimates." Its attorney also wrote to plaintiff that the MUA was not obligated to calculate connection fees under OPRA.

MOTION TO DISMISS FOR FAILURE TO PAY "MUNICIPAL CHANRGES"

The Township moved to dismiss the complaint for failure to comply with N.J.S.A. 54:3-27, which requires that all taxes and municipal charges, up to and including the first quarter of the tax year under appeal must be paid on, or prior to, the return date of the municipality's motion to dismiss the complaint for non-payment of tax (which here was made on the trial date, without notice to the self-represented taxpayer). The Township maintains that the outstanding amount of $1,237 (explained above) qualifies as "municipal charges" based on Milltown Indus. Sites v. Borough of Milltown, 12 N.J. Tax 581 (Tax 1992), aff'd o.b., 15 N.J. Tax 144

(App.Div.1993), which held that water, sewer, and electric charges qualify as "municipal charges" for purposes of N.J.S.A. 54:3-27.

However N.J.S.A. 54:3-27 applies only to complaints filed directly with the Tax Court, and not to those which are filed as a result of County Board judgments. When, as here, a taxpayer appeals an assessment to the county board of taxation and thereafter to the Tax Court, our Legislature has required that "all taxes or any installments thereof" outstanding for the year under appeal must be paid at the time the complaint is filed, in order to prosecute the appeal. N.J.S.A. 54:51A-1(b). Indeed, Milltown Indus., supra, pointed out this difference. See 12 N.J. Tax at 583, n.1 (noting that "[t]here is a different tax-payment provision that is applicable when a complaint filed with the Tax Court seeks review of a judgment of a county board of taxation") (citing to N.J.S.A. 54:51A-1(b)).

N.J.S.A. 54:51A-1(b) does not include a requirement of having paid all municipal charges. Because of this plain language, and further because "it is permissible to have different standards, there is simply no reason for this court to read the water and sewer charge payment requirement of N.J.S.A. 54:3-27 into the tax payment requirement of N.J.S.A. 54:51A-1b." Frisina v. City of Newark, 15 N.J. Tax 357, 362-363 (Tax 1995). Therefore, "if the municipality has failed to raise the defense of non-payment of municipal charges at the initial county board appeal of the assessment" it cannot deprive the court the ability to hear the merits of the complaint. Id. at 359. For these reasons, the Township's oral motion at the hearing is denied.[4]

VALUATION

[4] Due to its inapplicability, the court does not reach the merits of the issue whether the outstanding file review fees of $1,237 would qualify as municipal charges for purposes of N.J.S.A. 54:3-27. It is doubtful it would since the charges for which a lien can be filed applies to amounts due after a water connection is provided (see N.J.S.A. 40A:31-10; 31-11; 31-12) or sewer connection is provided (see N.J.S.A. 40:14B-22; 14B-41; 14B-42). Here, there is connection to neither utility.

"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, 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. 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), aff'g, 10 N.J. Tax 153 (Tax 1988). 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.

In his complaint plaintiff alleges that the fair market value for the Subject, which is what a willing buyer and willing seller negotiate for, is not the listing price $115,000; the assessment of $195,300; the County Board's reduction of $155,000, or "$500,000 (Value Current Listing Price on M.L.S.)." Rather, he alleges, it "is nothing not one dime based" upon the deed restriction; the refusal of the Township to quantify the water and sewer connection costs; and the incorrectness of the Township's $100,000 or more cost estimate because its own ordinance requires a connection fee of only about $2,900. He further claimed that he can neither use the property to rent since it is zoned residential, nor sell it because of the Township's "extortionist" behavior. He vehemently disputed that he owed $1,237 and maintained that he would not pay it as a condition for obtaining the current connection costs for water and sewer.

Generally, restrictions on use of real property can affect its market value. As stated in Township of West Orange v. Goldman's Estate, 2 N.J. Tax 582 (Tax 1981), "[g]overnmental

restrictions, such as the requirement of adequate sewage disposal facilities, necessarily affect the determination of highest and best use, and real property cannot be valued as though the restrictions did not exist." Similarly, a deed restriction that the property must be used only for farming can impact its market value. See All Monmouth Landscaping & Design, Inc. v. Township of Manalapan, 23 N.J. Tax 250, 258-259 (Tax 2006). So can a conservation easement. Village of Ridgewood v. Bolger Foundation, 104 N.J. 337, 342 (1986) (by agreeing to maintain property as open space, the property owner "surrender[s] . . . elements of value," and therefore, the "adverse impact of such an encumbrance on market value must be taken into account in arriving at an assessed valuation").

Additionally, the market value of vacant land can be impacted by the limited or unavailable utility services, therefore, real estate appraisers must carefully investigate the same, since "limitations resulting from a lack of utilities are important in highest and best use analysis." See Appraisal Institute, The Appraisal of Real Estate, 220 (13th ed. 2008). This includes an inquiry into "any unusually high connection fees," "[a]typical[] high or low service costs," and other "special utility costs." Ibid.

There are two problems here that constrain the court to affirm the County Board judgment. First, the court is not convinced that the deed restriction on the Subject adversely affects its marketability. This is because as of the valuation date (October 1, 2013), there was a sewer facility available to connect to, and service the Subject in contrast to its unavailability in 2006 when the Subject was created. The sewer connection was in front of Lot 6.05 (the erstwhile property where plaintiff resided). The water connection for the Subject was on Schoolhouse Road, where the Subject is located. However, the fact that plaintiff is in dispute with the Township as to the legality of the $1,237 being demanded from him and the Township

in retaliation refuses to provide him information of the current connection and reimbursement costs, does not render the deed restriction as being such a legally cognizable encumbrance that the Subject is either valueless or at a much lower value. Although the Township's use of the 2006 reimbursement estimate in response to inquiries from potential buyers is puzzling given its 2014 concession that most of the reimbursements have expired,[5] the court does not find that deed restriction, as of the valuation date, as an impediment to the Subject's market value. While a buyer would undoubtedly have to pay for connection costs, and this would undoubtedly factor into and impact the sale price of the Subject, the fact that a sewer connection is available allows compliance of the deed restriction that there be "a functioning sewer connection to the . . . Township [MUA] sewer line prior to the issuance of a building permit." Indeed, this is what occurred when plaintiff sold Lot 6.05 (where he used to reside) since he conceded that buyers of the home obtained sewer connection by tapping into the one running in front of the house.

Second, even if the court were to accept plaintiff's argument that the Township's refusal to provide information on the reimbursement amounts is improper (the Township not having provided any statutory or other legal authority in its responses which would permit it to withhold information or compute costs unless plaintiff pays $1,237 plus another $250), plaintiff has the burden of proving the Subject's true value. See All Monmouth Landscaping, supra, 23 N.J. Tax at 259 (burden is on appealing party to prove the incorrectness of an assessment vis-à-vis the detriment of a restrictive covenant with legally cognizable qualitative and quantitative proof of

[5] N.J.S.A. 40A:26A-11 allows for the imposition of a "connection fee or tapping fee" in addition to usage or rental charges, which "shall not exceed the actual cost of the physical connection plus an amount representing a fair payment towards the cost of the system." The statute then delineates a method of computing each residential unit's fair share. Ibid. It requires the connection fee be "recomputed "at the end of each budget year, after a public hearing is held" so that the "revised connection fee" can be imposed on those who connect to the sewerage system "in that budget year." Ibid.

"a true value different from the assessments" which is "generally established by expert testimony, or testimony regarding comparable sales").

In this respect, plaintiff has not carried his burden. Although he vehemently argues that the 2006 cost estimate for water and sewer connection is wrong, especially when the Township's ordinance sets the connection or "tapping" fee at about $2,900 for sewer connection, and the Township has conceded that much of the developer-cost reimbursements need not be paid, he uses that same number as an offset to what he thinks should be the Subject's value, i.e., $115,000 to $125,000. He did not search for any comparable vacant land sales in 2013 because he did not know that the valuation date was October 1, 2013. He claimed that he could only find two parcels of vacant land in the Township which sold in 2014. One was a residential lot with a burnt down improvement, probably located on Half-Acre Road, which sold in December 2014 for $169,000. The property was a corner lot with street frontage, a driveway and all utility connections. Another one sold in 2014 and was "all woods." He was not sure of its location or sale price but was sure it had no deed restrictions as the Subject. These remoteness of these sales from the valuation date is a cause for concern unless there was proof that there was a paucity of sales in 2013 in the Township or in nearby municipalities deemed competitive with the Township. There was no such proof. Further, there was no analysis of the arms-length nature of the sales. See Glen Wall Associates v. Township of Wall, 99 N.J. 265, 282 (1985) (the court must "appraise the circumstances surrounding a sale to determine if there were special factors which affected the sale price without affecting the true value").

He stated that there were several vacant lots for sale in the Township sized similar to the Subject and were listed at $250,000 (with all approvals in place) or $60,000 (if wetlands). However, there were absolutely no details in this regard. Without any information, it is not

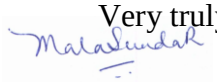
possible for the court to simply accept that the Subject's listing prices between 2007 and 2014 as indicative of the Subject's true value, which must then be reduced by about $100,000 estimated water and sewer connection costs, which estimates plaintiff himself disputes.

For all of these reasons, the court finds that plaintiff has not overcome the presumptive correctness of the County Board's judgment.[6]

CONCLUSION

The County Board judgment reducing the assessment to $155,000 is affirmed. An Order and Judgment in accordance with this opinion will be issued.

Very truly yours,



Mala Sundar, J.T.C.

[6] The court makes no finding or ruling on the propriety of the Township's or Township's MUA's dealings with or demands for payment from plaintiff as a condition for providing the actual developer-reimbursement costs for sewer connection and plaintiff's dispute in this regard, because it has no jurisdiction to do so.