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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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Re: Renna et al. v. Borough of Highland Park
Block 75, Lot 3.01
Docket No. 019186-2013

Dear Counsel:

This letter constitutes the court's opinion following trial in the above-captioned matter. Plaintiffs contest the judgment of the Middlesex County Board of Taxation ("County Board"), which affirmed the local property tax added assessment of $229,000 for a newly constructed single-family residence, prorated for the 12 months of tax year 2013 on the above captioned property ("Subject"), located in defendant Borough of Highland Park ("Borough"). With the value allocated to land of $99,000, the assessment on the Subject was $328,700. The Chapter 123 ratio for 2013 was 39.5% with an upper limit of 45.43% and a lower limit of 33.57%. Application of the average ratio provides an implied true value of $832,150 (rounded).

*

Plaintiff wife provided testimony on the construction costs of the home. Plaintiffs' expert, who was accepted as such by the court without objection, opined a value as of December 1, 2012 (since the improvement was completed December 2012) of $700,000, under the sales comparison approach. He also used a brief cost approach analysis using the actual construction costs and cost of acquiring vacant land to conclude a value of $685,000. The Borough's assessor, who was offered, without objection, as an expert, provided rebuttal testimony.

For the reasons stated below, the court finds that plaintiffs' expert's cost approach is not reliable. Although his use of the actual cost to acquire vacant land and actual construction costs as value indicators of the new constructed Subject, he failed to elaborate or itemize the indirect or soft costs, he claimed to have included in his report. Without adding such costs, the court cannot, even if it could, infer an addition for entrepreneurial profit. The expert's market approach is problematic due to the un-persuasiveness of some of the adjustments to the comparable sales. Therefore, the assessment is affirmed.

FACTS

Plaintiffs were looking to build a residence in the Borough. They were approached by a builder/contractor, Stevenson Home Construction Company, who offered to build plaintiffs a home and also help find them vacant land for this purpose. The contractor advised them that the Subject lot was available for sale. The lot, measuring 0.33 acres, in a residential zone RA, was owned by James and Rita Polos, who also had built a home nearby and in the process, subdivided that lot, so as to dispose the excess, and eventually sold both the home and the lots.[1] Plaintiffs neither met with nor negotiated the price of the Subject's lot with the sellers, which

[1] The other lot, 2.01, was adjacent to the Subject at 252 South Adelaide Avenue, measured 0.18 acres, and sold June 3, 2011 for $260,000, and was then improved with a single-family home. The seller was "4R Kids, L.L.C," of which Mr. Polos was a member. The Subject lot was also transferred from that entity to the Polos' individually by a deed recorded August 2, 2011, and the Polos' then sold it to plaintiffs.

was not listed on the Multiple Listing Service ("MLS"), but paid the sale price conveyed to them by the contractor. No broker's commission was paid for the purchase. The assessor testified that it was an arms-length sale and the seller was under no duress. He noted that the lot sold for slightly above the average ratio for 2011 and it was considered a usable sale for purposes of developing the Chapter 123 table.

By deed dated December 8, 2011, plaintiffs entered into a contract for the sale of real estate with Mr. and Mrs. Polos for $310,000. Plaintiffs borrowed $137,940 from a bank towards this purchase. The deed for the purchase was signed and recorded in February of 2012.

By another deed dated December 16, 2011, plaintiffs entered into a construction agreement with the contractor (who was identified as being engaged in the construction business as a General Contractor), whereby the latter would construct a single-family home for the former. The contract provided that the contractor was to bear all of the costs, but plaintiffs would compensate it for the same in the amount of $342,500. The work identified in the contract, for which the contractor was compensated, was for construction (provision of labor and materials for building the house according to the architectural sketch prepared by another entity, and for landscaping), acquiring permits, utility connection, and builder's insurance. By an addenda (not produced at trial), the contract was amended to include the finishing of the basement and construction of a deck for an additional cost of about $59,000. Plaintiff wife testified that the basement cost was about $31,000. No documents were produced to verify this number.

Plaintiffs borrowed $402,060 from the bank as a construction loan, which included the costs for the basement and deck. No other amounts were paid to the contractor. The bank made periodic disbursements of the construction loan to the contractor depending on the percentage of

completion of the construction. In total, plaintiffs borrowed $540,000 ($137,940 + $402,060) from the bank. They also paid monies personally as a down payment of about $172,000. In all, they paid $712,060 for the land and construction ($310,000+$402,060). The home was ready for, and was occupied by plaintiffs on December 1, 2012.

The home is a colonial-style building located on a private residential street. It has four bedrooms, two full and one half bathrooms on the upper level. The first floor (which has a living/dining room; eat-in kitchen, family room with a fireplace) has 9-foot ceilings and hardwood floors throughout (except for the family room). The second floor where the bedrooms are located (plus an open area) is carpeted. Amenities are new and of very good quality though not high-end or "over the top." The basement is finished with a recreation room, bedroom and a full bath, the finished area being about 1,200 square feet ("SF") of the 1,500 SF. The total gross living area ("GLA") is 3,474 SF. There is a two-car detached garage and an open wooden deck in the rear. The property's rear is a short distance from the Raritan River. The backyard slopes downward but not severely. The expert's report noted that during winter, the second floor provides "limited views" of the river through the trees and foliage.

Plaintiffs' expert and the assessor agreed that the Subject was not in the expensive or high-end neighborhood which was the "northside" (north of Raritan Avenue). They also agreed that the area south of Raritan Avenue ("southside") had a majority of the commercial section, thus, less desirable. The Subject was positioned southwest of Raritan Avenue, closer to the Raritan River and Donaldson Park, thus more desirable than homes in the southside without these features. Although plaintiffs' expert testified that there were no other subsections due to the Borough's small perimeter, his analysis of the "immediate neighborhood" also identified "Custom," "River," Donaldson Park," "Twin Brook Arce," and "Livingston Manor." The

analysis, which searched for home sales of $500,000 or more, showed that of the 23 sales in this category, about 70% of the higher priced homes were north of Raritan Avenue.

VALUATION

Plaintiffs' expert used a brief cost approach analysis applying the actual costs for land acquisition ($310,000) and construction costs. His report noted that the land sale was arms-length at fair market value, and that the "actual building costs (including soft costs)" of "$373,000" which translated to $107 PSF (without the finished basement) was "reasonable." He then concluded a value of $685,000.

Under his market approach, the expert used five sales of colonial styled homes, all located within the Borough, four on the northside, and one on the southside. He relied on the assessor's records or other publicly information, including data from the MLS and discussions with a realtor/broker for sales verification and interior physical descriptions. Two comparables were newer homes (one and two years old); two were older (49 and 104 years) but he deemed their effective age as one and two years due to their substantial renovations. He provided adjustments for north side location (-5%), size ($330,000 per-acre), age (+10%), bathroom count ($10,000 for full; $5,000 for half), GLA difference ($60 PSF), unfinished basement (+$20,000), garage ($4,000 per car), and deck ($3,000).

The analyzed comparables were:

Location	Sale Date	Sale Price	Adjusted Sale Price
446 Harrison Avenue	July 5, 2013	$610,000	$536,360
28 North 8th Avenue	March 9, 2012	$580,100	$701,700
247 Lincoln Avenue	August 29, 2012	$575,000	$724,790
316 Cedar Avenue	January 30, 2013	$535,000	$693,640
9 Grant Avenue	September 10, 2012	$690,000	$738,360

The adjusted sale prices provided an "average of $678,970." He removed the "lowest outlier" of $536,360 (Comparable One) which gave a mean of $715,000. Placing most weight on Comparable Four (Cedar Avenue) because it was closest in proximity to the Subject, on the southside, and a new construction, he concluded a value of $700,000. He testified that the market approach was more reliable since the market must substantiate value, whereas using pure costs could include over-improvement in value which may not be reflected by the market.[2]

FINDINGS

"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.

Under N.J.S.A. 54:4-63.2, an assessor is required to prepare an added assessment list in which he or she includes an assessment for any building or other structure which was "erected, added to or improved after October 1 . . . and completed before January 1 following." The added assessment "includes a full current-year added assessment and a prorated assessment for the

[2] In his report he claimed that he gave the cost approach the same "considerable weight" as his market approach.

period following completion in the previous year." Van Orden v. Township of Wyckoff, 22 N.J. Tax 31, 34 (Tax 2005).[3] In examining the validity of an added assessment, the court must consider the value of the entire parcel. Lawrence Assocs. v. Township of Lawrence, 5 N.J. Tax 481, 517, n.9 (Tax 1983) (value determined should be that of "the entire property" and the land value "is one aspect of the overall value and it must be dealt with in that context").

The court finds that the plaintiffs' proffer of evidence through expert testimony, where the expert had made value conclusions based upon recognized appraisal methods, with competent data of costs and comparable sales was sufficiently credible to overcome the presumptive correctness of the assessment. In this connection, the court notes that the expert's use of December 2012 as the "effective" valuation date, while statutorily incorrect, is nonetheless not fatal. First, the expert's report recognized that the valuation date was October 1, 2012. Second, the December 2012 move-in date was only about 2 months after the valuation date. The expert's report noted that the market remained relatively stable through the last three years (2011-2013 since his report was finalized November 2014). That report was submitted into evidence without objection, and the Borough did not challenge this assertion. Therefore, the court will not reject the expert's value conclusions on this ground.

(1) Cost Approach

The cost approach is used to determine value "by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive; deducting depreciation from the total cost; and adding the estimated land value." Appraisal Institute, The Appraisal of Real Estate 378 (13th ed. 2008). Land value is determined by analyzing "sales of similar parcels of land" and "making required adjustments." Ford Motor

[3] As noted above, the added assessment at issue is only for the 12-month period of 2013.

Co., supra, 10 N.J. Tax at 176-77. Improvement value analyzes the "cost to develop similar improvements as evidenced by the cost of construction of substitute properties with the same utility as the subject property." The Appraisal of Real Property, supra, at 377.

Plaintiffs' expert use of the cost approach is reasonable being an appropriate methodology for valuing new or relatively new construction since "cost and market value are more closely related when properties are of new or relatively new construction." Id. at 382. His use of the Subject's sale as market value of the land is not unreasonable. There was no dispute that the sale was at arms-length. Although plaintiffs never negotiated directly with the sellers, there was no proof to show that the sellers were connected or related to the builder/contractor. The assessor himself agreed that the sellers were not under any pressure to sell, and that the sale was not marked as non-usable for any reason.

The plaintiffs' expert's use of the actual building costs is also reasonable. See RCA Corp. v. Township of East Windsor, 1 N.J. Tax 481, 501 (Tax 1980) (actual costs of construction can be considered for this purpose, but are not necessarily "controlling"). There was no proof that the cost agreed to in the construction contract and/or the costs for the basement plus deck was at non-market rates or that the contract was not arms-length. The building contractor was a commercial entity in the business of building homes. There was no indication that this entity was under-bidding the entire project of building the home on the Subject. See The Appraisal of Real Estate, supra, at 387 ("contractor bids on same set of specifications can vary substantially" depending on whether the contractor is busy, thus will bid high, or "needs work," and thus will submit a lower bid). Nor was there proof to show that the construction costs were not market rates or that there were market changes for the 10-month period from the date of the construction contract (December 2011) until the valuation date (October 1, 2012).

The Borough's proffer of plaintiffs' home owners' insurance coverage on the "dwelling" for $500,000 as evidence that the value of the improvement had to be more than the direct costs is not credible. First the policy is for December 12, 2013 to December 12, 2014, beyond the valuation date. Second, at issue before the court is the validity of an added assessment, which is more than simply a review of the value of the added improvement that is at issue. Third, the Borough provided no evidence of the insurance company's basis for or methodology of the "valuation" conclusion for purposes of the insurance coverage, or that the value conclusion was done by a certified real estate appraiser who would be qualified as an expert. The Borough's assessor, accepted as an expert, did not opine an independent value conclusion under the cost approach, nor adopt, by reference or otherwise, the insurance coverage amount as another's expert opinion. Even if he did, the court would deem it as an impermissible net opinion.

Nonetheless, plaintiffs' expert's cost approach poses two problems. First, although his report claims to have included soft costs in concluding the total actual building cost at $373,000, the type and amounts are not itemized anywhere. Nor was there any testimony in this regard. Indeed, the direct construction costs, i.e., the amount paid to the contractor, alone were $402,060.

Indirect costs are expenses or "allowances for items other than labor and material [and] are not typically part of the construction contract." Id. at 387. These include costs for architectural plans, building surveys, legal fees, real estate taxes on the vacant land while the building was being constructed, and interest being paid on construction loans. Id. at 387, 388. Here, the construction contract did not appear to include any payment for soft costs. The cost of the architectural plans, prepared by another company, was not included. The bank's disbursement schedule did not show that the $402,060 paid to the contractor included payment for the architectural fees. The court has no information about, and thus, cannot compute, other

indirect costs such as legal fees (the closing statement for the lot and the deed of sale indicated attorney participation), taxes, interest, or other fees such as survey and title search. Thus, plaintiffs' expert conclusion of the improvement cost is not credible.

The other issue is the lack of inclusion of entrepreneurial profit. This is a percentage (generally between 5%-10% is accepted by our courts as reasonable), which is added on after determination of the direct and indirect costs. See id. at 379 (estimated costs must include direct and indirect costs "plus entrepreneurial profits"). Plaintiffs' expert decried the same on grounds the home was built-to-suit for plaintiffs' to reside there with their family, not to immediately resell the house for a profit. He so testified, despite the notation in his report that his value conclusion under his market approach was higher than under the cost approach because "a small entrepreneurial incentive may be considered as well." The Borough's assessor disagreed.

However, whether or not the expert's position is credible, and whether or not the court can infer an appropriate percentage in the absence of any market data or other proofs (see B.F. Goodrich Co. v. Township of Oldmans, 17 N.J. Tax 114, 122-123 (Tax 1997) rejecting the expert's position no profit should be included if the property is owner-occupied as "wide of the mark" but refusing to infer a rate without market data or proofs), aff'd, 323 N.J. Super. 550 (App. Div. 1999)), need not be analyzed here because of the absence of the inclusion of the soft/indirect costs of construction. Without this information, the court cannot correctly apply the cost approach. It would then be engaging in a futile exercise in inferring an appropriate rate for entrepreneurial profit. The court is therefore constrained to reject the value conclusion under the cost approach.[4]

[4] Without the soft costs and/or entrepreneurial profit, the assessed-to-true value ratio would be 46.1% ($328,700/$712,060) which is above the upper limit of 45.4%. The Borough points out that the assessment would have to be affirmed if a 5% entrepreneurial profit margin were added (5% of the direct costs or $20,103 would

(2) Market Approach

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. The Appraisal of Real Estate, supra, at 297.

Plaintiffs' expert's use of the market approach is reasonable given that the Subject is a residential property. The comparables he chose are credible in that they were all in the Borough, new or relatively new due to renovation, and of the same style. However, Comparable Four (Cedar Lane), upon which the expert placed most emphasis, is problematic. Contrary to the expert's report which stated that "all comparables sold without concessions," it was on the market for only 19 days and sold with a $10,000 concession. In response to the court's query, the expert claimed that he relied upon the real estate's broker's confirmation that the sales was arms-length, but that its adjusted sale price should be reduced by the concession amount. However, such reliance without any details of the nature and circumstances of the concession is insufficient to conclude that the sale price is indicative of market value. See Glen Wall

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increase the total cost to $732,163, providing an assessed-to-true value ratio of 44.95%). However, the soft costs should be first quantified since the profit is computed on the direct and indirect construction costs. Given the one year span of the Subject's lot acquisition and improvement, and the apparently uncomplicated nature of the construction (single family home), the soft cost estimates would have been relatively simple to estimate, and would likely not be significant in amount. For instance, the real estate tax paid on vacant land during construction could have easily been calculated using the Borough's tax rates based on its assessment of $99,000 for land. The HUD closing statement showed that the bank loan was at 3.25% (slated to go up only in 2017). Even assuming that the loan was acquired sometime early 2011 or even late 2010, interest on the construction loan for two years could have been easily computed. Legal fees could not have been significant or complicated and actual or market fees could have been included. The court could have then decided on the imputation of a profit margin, and come to a value conclusion, which for a new construction under the cost approach would have been the most reliable. This opinion could have ended here.

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"); The Appraisal of Real Estate, supra, at 329-30 (if "non-market conditions of sale are detected in a transaction, the sale can be used as a comparable . . . only with care," thus, the "circumstances of the sale must be thoroughly researched," thus, "[v]erficiation is key" since concessions do fall outside the "commonly used definition of *market value*."). The court therefore will place no weight to Comparable Four.[5]

Comparable One (Harrison Avenue) is also less credible as a value indicator. First, the lot size was erroneous in that it was about 2.28 acres (per the actual deed) as opposed to the expert's use of 0.4 acres (per the assessor's records). Plaintiffs' expert agreed that this would have changed the amount of his size adjustment. Second, the property was subject to significant flooding issues due to an adjacent creek which ran by the front and side of the house affecting the condition of the basement and garage. Plaintiffs' expert agreed there was a creek but relied upon the broker's assertion that the basement was dry and adequately equipped with drains so that there was no value detraction. The court finds the assessor's testimony is this regard more credible since he had personal knowledge of the same having revised its 2011 assessment after its 2008 renovation, and had also viewed extensive photographs of flooding provided by the home owner. Thus, this issue should have warranted some positive adjustment. Third, it sold about nine months after the valuation date of October 1, 2012. Although the expert's report indicated that the market was relatively stable for 2011-2013, the fact that he included sales occurring in 2012 allows this court to consider those as more probative due to the proximity of

[5] Further, the assessor testified without contradiction that the comparable, although newly built, was located behind an older apartment complex, thus, inferior to the Subject which was surrounded by newer single family homes.

those sale dates to the valuation date. Fourth, the expert himself excluded the sale because he deemed its adjusted price of $536,360 as an outlier.[6]

The credibility of the expert's adjustments varies. The location adjustment, based on a 3-year review of sales $500,000 and over, 70% of which were clustered on the northside, supported the conclusion that homes located in the north had a superior location, which opinion the assessor also shared. The locational map of this cluster showed that the Subject's location is closer to the river and to Raritan Avenue than the 30% of the analyzed cluster (one of these sales included Comparable Four which the court deemed a non-reliable indicator of the Subject's true value). However, it also shows that the Subject is located closer to homes which sold for over $500,000 but not over $600,000. Thus, the 5% is not an unreasonable quantification of the adjustment.

The +10% adjustment for age for only one of the five comparables, was admittedly subjective, but not unreasonable considering the 40-year difference. There was no evidence to counter the reasonableness of the adjustments for the bathroom and garage count, which the expert testified was based on cost data from Marshall & Swift.

Plaintiffs' expert admitted that the basement adjustment should have been higher than his uniform +$20,000 for full unfinished basements because the cost for finishing about 80% of the Subject's basement was $31,000. He also agreed that the basement finish in Comparable Five was only 433 SF as opposed to the Subject's much larger area, therefore, should have provided some upward adjustment instead of none. He testified he would have used something less than

[6] Plaintiffs' expert did not know of the comparable's additional two fully functional bedrooms on the third floor. It did not impact the total GLA, thus, his adjustments for the same. The expert maintained that he would still use it as a comparable. The assessor claimed that the effective age was about 10 years although it was renovated in 2008 due to the old basement and old structure of the house for which "some" adjustment was warranted.

the $31,000 since that would have included a developer's profit, and that a range of $20 PSF or less would be a reasonable amount. He did not however quantify this amount.

Similarly, the adjustment of +$3,000 for a deck was much less than what it cost at the Subject. The expert stated that he based the amount on an estimated cost to build, yet he also maintained that the Subject's construction cost was at market. He did not reconcile the two.

The GLA adjustment of $60 PSF, which was based on an extraction of the PSF value from a "matched pair" analysis,[7] has three problems. First, the matched pairs were of homes from the north and south side, yet he maintained that homes on the north side sold for much higher than those in the south. Second, none of the sales were of new or relatively new homes as the Subject (indeed, he had made a +57,000 adjustment for one of the matched pair sale for its 40 year-age). Third, he rejected the PSF of $118 from one set (which comprised of two homes on the north side) as being an "outlier." The rejection is questionable especially when he had used one sale from this pair as a comparable sale (247 Lincoln Avenue), and also because the other two "matched" pairs included homes from the north side. It is unknown why the PSF of $118 was not "in line with market expectations." As noted by this court:

> Either of the eliminated sales may have had a greater degree of similarity to the subject property than those reflected by a narrower band of sales prices. Absent adequate explanation, this procedure amounts to no more than an averaging process which is a dubious technique at best. To treat all vacant land as fungible and to seek to reduce the disparity in prices by the elimination of range extremes does not constitute a reliable approach to the fair market value of the subject. What is required is an examination of the sales of comparable properties and the utilization of sound judgment with respect to the relevant value factors such as time, location, physical characteristics, utility and desirability.

[7] The three sets of pairs were as follows: Pair 1: 707 South 1st Ave. and 40 North 7th Ave.; Pair 2: 477 Lincoln Ave. and 247 Lincoln Ave.; Pair 3: 707 South 1st Ave. and 78 Harrison Ave. All sold in 2012 with lot sizes of about 0.2 acres. Sale prices ranged from $520,000 to $680,000 and GLA ranged from 2,330 SF to 3,219 SF. The PSF price differential (sale price difference divided by GLA difference) for each pair was $67; $118 and $58. This mathematically averaged to $81 PSF, but he used $60 PSF based on Pairs 1 and 3.

[Watnong Associates, Inc. v. Township of Morris 11 N.J. Tax 108, 117 n.7 (Tax 1990), aff'd, 12 N.J. Tax 252 (App. Div. 1991)]

If the court were to accept the expert's GLA adjustment of $81 PSF (although it is a mathematical average), the adjusted sales prices of the comparables, except for Comparable One, would be higher by about $10,000 to $24,000, making the $700,000 value conclusion suspect.

The lot site size adjustment was based on the expert's opinion that (i) since the adjacent lot of 0.18 acres was subsequently improved with a single-family home, the Subject had "excess" land; and, (ii) the value of this "excess" land should be used as the adjustment amount for the five comparable sales. Thus, although four vacant land sales (including the Subject and the adjacent land),[8] showed an average of $1.6 million per-acre, the expert used $330,000 per-acre ($50,000, the difference between the lot prices of the Subject and the adjacent lot dividend by their lot size differences of 0.15 acres), on grounds "a realistic adjustment factor is much lower, since [it] needs to capture the *excess* land that one building lot has more than another." The adjustment amount when using the average price per-acre of vacant land versus per-acre of allegedly surplus land differs by over $200,000.

The court is not convinced that the Subject's lot in excess of 0.18 acres was surplus, and therefore of much lesser value.[9] First, contrary to his surplusage theory, the expert deemed the Subject's 0.33 acres as "usable land area" and "all of which are usable," in his report. Second, 230-149 of the Borough's zoning regulations indicates that the "minimum" lot size should be 5,000 SF (or

[8] The other two vacant land sales were 0.11 acres at 130 Valentine St. for $175,000, and 0.17 acres at 258 South 11th St. for $430,500.

[9] Cf. Appel v. Township of Englewood, 15 N.J. Tax 537, 543 (Tax 1996) (where the court applied the municipality's expert's lower per-acre value of $250,000 for improved properties to a strip of land on the Subject that was deemed surplus due to its rear location and narrow configuration, noting the expert's position that "as improved property the extra land does not have the same value as if the land were vacant." That case however, did not indicate how the lower adjustment amount was computed for purposes of lot size adjustment to improved comparable sales).

about 0.11 acres) with a maximum lot coverage of 30% (plus 5% for deck).[10] If so, the Subject is three times larger than the minimum required. At 35% maximum lot coverage (since it had a deck), it can fit in a building of about 5,000 SF (35% of 0.33 acres). The Subject's improvement is about 3,474 SF (plus some more for the deck). The logical conclusion is that plaintiffs were able to obtain maximal use and benefit of the 0.33 acres by being able to build a larger sized home. Third, there is no information of either the zoning or the lot requirements for the five comparable sales of the improved property (which did not include the lot adjacent to the Subject). Thus, it is unknown whether the lot sizes of those comparables have surplusage, or required variances.[11]

Nonetheless, "it is not reasonable to assume that a prospective purchaser will view a 1/2-acre building lot as being equal in value to a one-acre or two-acre lot" or that " variations in lot sizes do not have significant or measurable influences on value" absent market evidence to the contrary. Watnong Assoc., supra, 11 N.J. Tax at 116, and n.6. Plaintiffs' expert adjustment amount of $330,000 per-acre could said to be based on a paired sales analysis, whereby he deemed the Subject lot and the adjacent lot as "equivalent in all respects but one" so that the price differential can be attributed to, and used to measure the "value of the single difference." The Appraisal of Real Estate, supra, at 316 (providing an example of two homes, alike in all aspects except for location, selling at a similar time but with a $15,000 price difference, and

[10] Plaintiffs' expert's report which contained the Zoning regulation pertaining to the RA zone (where the Subject is located), was admitted into evidence without objection in this regard. In addition, the court can take judicial notice of the zoning regulation since it is public law. See Evid. R. 201(a). The RA regulation states under "Bulk regulations" that "the requirements . . . of lot area and width, yard dimensions, building coverage and height shall be listed in the bulk schedule for the RA Zone contained in §230-149 of this chapter."

[11] The minimum lot area for other residential zones in the Borough (RA-E; RB; RM-G; RM-T; RM-M) range from 7,500 SF to 3 acres.

noting that the difference is attributable to location and can be used to the adjust the sale prices of the comparables).

Here, both lots (Subject and the adjacent lot) were owned by the same seller. According to the assessor, the lots were subdivided by the prior owner. Both are in the same residential zone RA due to the Subject's undisputed zoning in RA, thus both likely have the same highest and best use, i.e., residential.[12] The access to both lots were the same, with neither lot being at an advantage over the other. The adjacent lot also sold in 2011 but about six months before the Subject lot was sold. The expert's report, stating that the market was stable in 2011, was not challenged by the Borough. Although the assessor claimed that he had in prior years reduced the assessment for the adjacent lot due to a potential loss of view from the improvement on the Subject's lot, there was no information as to the amount, methodology and tax year of the assessment reduction, and whether the actual sale reflected this reduction (but bearing in mind that an "assessment is not necessarily the value of the property" therefore there must be "evidence of the assessment's appraisal basis." 2nd Roc-Jersey Assocs. v. Morristown, 11 N.J. Tax 45, 53 (Tax 1990)).

In summary, while the adjustments for age, bathroom/garage count, and lot size (based on a paired data analysis) are credible, the remaining adjustments are questionable, and without sufficient data cannot make accurate computations. For instance, should the court assign something more than $20,000 but less than $31,000 for unfinished basements in the comparables regardless of the basement size? Could it apply or $20 PSF without knowing the basement size in the comparables? The same question applies to the deck adjustments. Should the +$3,000 be

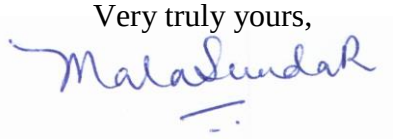
[12] The expert's report in the section titled "Scope of Work" inexplicably states that the Subject has been "identified by" among others, "a draft of the condo master deed contained in our files."

increased to something near $19,000 which it cost at the Subject? Should the $81 PSF GLA be applied even though it is a mathematical average, and is derived from homes which were not newly constructed as the Subject? Therefore, the assessment must be affirmed. As the Borough correctly points out, even if this court were to only change the GLA adjustment at $81 PSF, it would provide adjusted sale prices of Comparables Three and Five within the Chapter 123 corridor. Given that the court would place most emphasis on these two sales (both being closer to the valuation date than Comparable Two), lesser on Comparable Two, least on Comparable One and none on Comparable Four, using this approach would also result in an affirmance of the assessment.

CONCLUSION

For the aforementioned reasons, the assessment is affirmed. An Order and Judgment in accordance with this opinion will be issued.

Very truly yours,



Hon. Mala Sundar, J.T.C.