

TAX COURT OF NEW JERSEY



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**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF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

August 3, 2015

Via facsimile and regular mail

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**RE: KOLKER, GLENN & MURIEL v. CHATHAM BOR.;
DOCKET NOS. 012298-2013**

This letter opinion constitutes the court's determination after trial of the appeal filed by the plaintiffs, Glenn & Muriel Kolker ("Kolkers"), challenging the decision of the Morris County Board of Taxation ("Board") affirming the 2013 property tax assessment of their property located within the defendant municipality, Chatham Borough ("Borough"), commonly known as 102 Watchung Avenue, Chatham Borough, Morris County, and designated by the taxing district as Block 115, Lot 65 ("Subject Property").

For the reasons set forth herein, the court affirms the Board's judgment affirming the 2013 tax assessment for the Subject Property.

The Subject Property contains a two-family dwelling with a "net livable area" of 2,245 square feet (both units combined), as measured by the expert. The lot size is approximately 19,500

square feet and is generally rectangular in shape. The Subject Property is located in the R-2 (Residential) zone. The Subject Property was originally assessed and affirmed by the Board as follows:

<u>2013</u>	<u>Original</u>	<u>Board</u>
Land	\$530,600	\$530,600
Improvements	\$209,300	\$209,300
Total	\$739,900	\$739,900

The Kolkers offered the testimony of a professional real estate appraiser who was accepted by the court as an expert; the expert prepared an appraisal report that was admitted in evidence, also without objection. According the Kolkers’ expert, the Subject Property’s true value on the relevant valuation date was:

<u>Amount</u>	<u>Tax Year</u>	<u>Valuation Date</u>
\$510,000	2013	October 1, 2012

The expert concluded that the highest and best use of the Subject Property is its present use as a two-family dwelling which is “Legally Allowable” in the R-2 zone.

He relied only on the Sales Comparison Approach to value, concluding it is the most appropriate approach to determine the value of the Subject Property. According to the expert “[t]he lack of comparable sales in closer proximity to the [S]ubject [Property] warranted expanding the standard one mile distance parameter from the subject property . . . into neighboring Madison in order to locate and utilize suitable properties.” To that end, he identified four sales he concluded were comparable to the Subject Property, four in Madison and one in Chatham; these are the same properties that were presented as comparables to the Board. According to the expert, these properties “reflect the most recently closed properties similar to the subject property in most aspects of value and marketability.” The expert “investigated and analyzed [each comparable]

through all local and national information sites that are available to [him] . . . [and] municipal offices [were] utilized to further confirm cited data. Additionally, . . . financing [terms] for each comparable sale were investigated from public records available from the appraiser's information sources.”

To these four properties, the expert made various adjustments for location, lot size, design/appeal, condition, number of bedrooms, number of bathrooms, gross living area, heating/cooling, car storage, and various amenities. His gross adjustments ranged from 17.5% to 25%.

All of his comparables, like the Subject Property, are rental properties with two or three rental units. However, the expert elected not to use the income approach to value citing “the rental data . . . are typically omitted or the homes either sell vacant or with little or no data pertaining to the gross income and expense data included within the multiple listing of the property.”

The Township elected not to offer an expert report or testimony, but rather relied on the assessment. The issue before the court is confined to the true value of the Subject Property for the tax years in dispute.

Value

(1) Presumption of Validity

“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). The 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)). The presumption is not simply an evidentiary

presumption serving only as a mechanism to allocate the burden of proof. It is, 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. MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 374 (citing Powder Mill, I Assocs. v. Hamilton Township, 3 N.J. Tax 439 (Tax 1981)). 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).

A taxpayer can only rebut the presumption by introducing cogent evidence of true value. The evidence must be definite, positive and certain in quality and quantity to overcome the presumption, Aetna Life Ins. Co. v. Newark City, 10 N.J. 99, 105 (1952), and “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.’” W. 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. 2000), certif. denied, 165 N.J. 488 (2000)).

Therefore, at the close of plaintiffs’ proofs, the court must be presented with evidence which raises a debatable question as to the validity of the assessment. MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 376.

The court finds that the Kolkers failed to create a sufficient question regarding the validity of Subject Property’s original assessments for the 2013 tax year. Accordingly, the Kolkers have failed to produce sufficient evidence to overcome the presumption of validity afforded to the judgement of the Board affirming the original assessment of the Subject Property.

(2) Approach to Value

With regard to the expert's Sales Comparison Approach, while it appears that the Subject Property contains a legally permitted two-family use, whether some or all of the alleged comparables are also legally permitted uses is not clear to the court. The expert's methodology here illustrates why this court has been reluctant to accept expert opinions as to value when those opinions rely solely or primarily upon online data sites. By the expert's own testimony, even the multiple listing information is not complete; this doesn't even begin to address whether website data is even accurate, or the education, training and competency of those gathering and imputing the data.

Despite the expert's claim he cross referenced website data with municipal offices, apparently none of the owners of the four alleged comparable rental properties were served with or responded to any Chapter 91 income request. As for the Subject Property, the court observes, that there was no motion to dismiss this matter for failure of the Kolkers to answer a Chapter 91. This leads to one of two possible conclusions: either the Kolkers provided a response to a Chapter 91 income request, or no such request was made.

While it may be true that the income and expense data is not included in the multiple listing data, if the alleged comparables are legally permissible rental units, the income must be available somewhere. At least some of the four properties were bank financed and not owner occupied, according to the expert's testimony. Clearly a financial institution lending money for the purchase of rental properties would have required income information for those properties. Furthermore, at least two of the proposed comparables, according to the expert, were cash deals; surely, whether financed or a cash deal, an investor/purchaser would have wanted to be satisfied that there was sufficient potential rental income from his or her investment. The court is not satisfied that the

sale prices of the alleged comparables reflect sales of valid rental properties. An analysis under the Income Approach to value may have been useful to corroborate the expert's conclusion under the Sales Approach. That was not provided here.

Conclusion

The Judgment of the Board affirming the assessment is affirmed. The Tax Court Clerk/Administrator is directed to issue judgment consistent with this letter opinion.

Very truly yours,

s/ Vito L. Bianco, J.T.C.

Hon. Vito L. Bianco, J.T.C.

VLB:tms