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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE

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Charles B. Stone, Pro Se
Middletown, New Jersey

Bernard Reilly, Esq.
Bernard M. Reilly, L.L.C.
90 Maple Avenue
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Re: Charles Stone v. Township of Middletown
Block 630, Lot 46.02
Docket No. 006234-2016

Dear Mr. Reilly and Mr. Stone,

This letter constitutes the court's decision following trial of the above captioned matter. Plaintiff owns the above referenced property as his residence ("Subject"). The Subject was assessed at $998,900 (allocated $232,200 land, $766,700 improvements) for tax year 2016. The Monmouth County Board of Taxation ("County Board") affirmed the assessment, and plaintiff timely appealed the County Board's judgment to this court.

The Subject lot adjoins a corner lot currently improved by a chiropractor's office. Plaintiff, a real estate broker, had bought the office and both lots as one in 2003 from a former dance studio. He rebuilt the studio to use as an office in his real estate business. He subsequently had the Subject built next to the office. This places the Subject in a cul-de-sac, with the office still at the corner

of the cul-de-sac and adjoining road. Plaintiff sold the office building four years ago to its current owner, who operates as a chiropractor.

The Subject's lot is irregular and measures 150x194 square feet ("SF"). It is improved by a single-family residence with a gross living area ("GLA") of approximately 4,170 SF which includes four bedrooms and two and a half baths. Plaintiff and his wife (also a real estate broker, but who did not appear at trial) have "agreed" that it had cost them $850,000 to build the house. There was no documentation in support of this figure.

Plaintiff characterized his home as beautiful both interior and exterior, and fit the other homes in the cul-de-sac which were always upgraded and well-maintained (except for one neighbor). He stated that the backyard was adjacent to trees and woods, which was picturesque and enjoyable in the spring and summer, however, was prone to wetness in the fall and winter from an adjacent creek.

Plaintiff maintained that the Subject is worth less than assessed for several reasons. One was that he had listed the house for sale on July 16, 2015 at an asking price of $1.15 million, until he removed the listing October 22, 2015. It was relisted on August 30, 2016 at $948,000, its current listed price. Plaintiff has received no offers to buy the house, and only one visitor at the personal request of his wife (as realtor).

Another reason was that a portion of the rear of the Subject was burdened by a permanent irregularly shaped conservation easement in favor of the State (measuring about 135 x 150 SF). This prevented full use of the backyard in that a pool could not be built, decreasing its appeal, thus value, to potential buyers.

Yet another reason was that the office on the corner of the street (i.e., his former office, now a chiropractor office) causes overflow of traffic in that the customers park their vehicles along

the cul-de-sac and in front of the Subject, blocking access to the driveway. This factor further decreases the Subject's value, per plaintiff.

Plaintiff also relied upon the sale prices of five comparable sales in the defendant ("Township"), which had been presented to the County Board. He obtained the information from the Multiple Listing Services ("MLS"), which he did not provide to the court. Per his testimony, and a google-powered map introduced by defendant to show the proximity of the comparables to the Subject, the details of the five sales were as follows:

(1) 15 Rolling Knolls Drive: located 2.7 miles from the Subject, the comparable sold for $719,900 on 02/17/2015. It has 4,443 SF of GLA which included five bedrooms and 4.5 baths. It shares the same high school district with the Subject.

(2) 15 Williamson Court: located 4.6 miles from the Subject, and in the Oakhill section of the Township, which per plaintiff is a better neighborhood. The comparable sold 08/06/2015 for $799,000. It has 4,682 SF of GLA.

(3) 10 Ferrin Court: located 4.6 miles from the Subject, it sold 07/10/2015 for $755,000. It has a GLA of 3,342 SF and, per plaintiff, is in a better school district.

(4) 42 Townsend Drive: located 4.5 miles from the Subject, it sold 10/27/2014 for $775,000. It has a GLA of 3,743 SF, and per plaintiff, has an extra full bath and water-view (being located in the Bay area).

(5) 6 O'Neill Avenue: located 3.9 miles from the Subject, the comparable sold 04/27/2015 for $655,000. It has 4,028 SF of GLA, and is located in the Oakhill section of the Township, which per plaintiff is a better neighborhood.

Plaintiff conceded that each comparable was at least forty years older than Subject in chronological age, but argued that their effective age (due to their condition and maintenance) would be much closer in time to his seven-year-old house. To support his claims of effective age and condition, plaintiff relied upon their physical description in the MLS postings and his general knowledge as a real estate agent/broker in the area for forty years. He claimed a have done a drive-by exterior inspection of all but one comparable, and was in the interiors of Sales 3 and 5. He was unaware that Sale 5 was in a flood zone or whether it had flooding issues, but noted that any negativity

caused by, or associated with, these factors was more than offset by a bay view and a less than $500 flood insurance premium.

Plaintiff sought a reduction of the assessment to $800,000. At the end of plaintiff's case, the Township moved to dismiss the complaint because for plaintiff was unable to overcome the presumption of correctness of the assessment.

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). The plaintiff bears the burden to both overcome the presumptive correctness of the assessment, and thereafter to prove what the value should be. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 314-15 (1992). The evidence to overcome the presumptive correctness of the assessment must be "cogent" thus, "definite, positive and certain in quality and quantity." MSGW, supra, 18 N.J. Tax at 373.

If the court finds the presumption is overcome, then it must determine the value "based on a fair preponderance of the evidence" provided by "both parties." Ford Motor, supra, 127 N.J. at 312-13. In this connection, and although the Supreme Court has expressed a preference for a value opinion based on credible data provided, Glenn Wall Assoc. v. Township of Wall, 99 N.J. 265, 280 (1985), 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).

By providing a reasonable number of comparable sales, all located in the Township, with four of the five sales being within three-to-eight months of the October 1, 2015 assessment date,

the court finds that plaintiff has proffered sufficient evidence to show a basis for challenging the assessment's presumptive validity.

However, he falls short of establishing an alternative valuation with cogent evidence. None of the sales were investigated as to their arms-length nature. There is also no credible evidence to enable the court to make the necessary dollar adjustments for differences in size or other physical/intangible characteristics, so as to arrive at a value conclusion itself. For instance, what location adjustment if any should be granted since plaintiff claimed that two of the comparables were located in a desired neighborhood, which according to him was "generally considered an upgrade from" the Subject neighborhood? How much, if any, should be adjusted for the Subject's conservation easement? It is not known whether the comparables had such an easement, or similar other property burden. Plaintiff was aware of the Subject's easement at the time of purchase. It is inconclusive that the easement is the cause for the alleged lack of interested buyers in the Subject. Plaintiff conceded that he and his wife enjoy the scenery protected by the easement, and spend time watching the wildlife and the creek, which buyers may find appealing. Thus, the conservation easement could be a detriment for some potential buyers, but could also be a selling point to others. If the easement nonetheless detracts from the property's marketability, there is no evidence of the quantum. Similarly, plaintiff's claim that potential buyers of large, beautiful homes expect to be able to build a pool in their yard, while not illogical, lacks any evidentiary support. Plaintiff's basis for the argument is his general knowledge and experience as a licensed realtor. Plaintiff's general knowledge and experience or the mere existence of the easement does not give the court sufficient data to independently establish the quantum of adjustment for these factors.

His claim that the comparables had an effective age closer to the Subject's actual age of seven years was speculative. Although he claimed that he was not attempting to prove a difference in condition on grounds all comparables were similar to the Subject in this regard, this claim was based on MLS descriptions and the general outward appearance of the comparables. However, physical descriptions or dimensions of a comparable as stated in the MLS, are credible when actually verified since MLS information is primarily an advertising mechanism. Almost all listings contain a caveat that the information therein is not "guaranteed." See also Appraisal Institute, The Appraisal of Real Estate, 119 (14th 2013) (MLS has "fairly complete information" nonetheless, "details" such as the "square footage, basement area, or exact age may be inaccurate or excluded" and where this information is being "pooled" it compromises the data quality). While the court gives some weight to plaintiff's experience as a realtor, his reliance on MLS postings and general reputation of the properties' locations do not constitute cogent evidence of value.

Finally, the evidence of increased commercial traffic from, and presence of, the chiropractor's office next door cannot establish a dollar value sufficient to award reduction. Plaintiff presented photographs of cars parking along the residential street and in front of his property during the office's busy hours, and testified that the client foot traffic far exceeds the office traffic when he owned it for use in his real estate business. Plaintiff did not indicate for what period of time the situation persisted, nor did he present sales before and after the change in circumstances to demonstrate how the change affected the Subject's value. Further, the business is styled as a residential home and does not detract from the residential nature of the Subject's cul-de-sac, in contrast to, for instance, an adjacent gas station.

In sum, plaintiff's reliance upon the unadjusted sale prices of the five comparables because they are same or similar to the Subject in terms of GLA and lot size, is not persuasive evidence of

their comparability with the Subject, sufficient to render them credible indicators of the Subject's value. Providing a list of comparable sales with unadjusted sale prices, and asking the court to reduce the assessed value of the Subject somewhere between such sale prices, does not meet a taxpayer's burden of providing "sufficient competent evidence of true value of the (subject) property." See Siegfried O. v. Township of Holmdel, 20 N.J. Tax 8, 20 (Tax 2002).

CONCLUSION

For the aforementioned reasons, the judgment of the County Board for tax year 2016 is affirmed. An Order so reflecting will be issued along with this opinion.

Very truly yours,

Mala Sundar, J.T.C.