NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE

R.J. Hughes Justice Complex
P.O. Box 975
25 Market Street
Trenton, New Jersey 08625
Telephone (609) 943-4761
TeleFax: (609) 984-0805
taxcourttrenton2@judiciary.state.nj.us

December 19, 2016

Michael S. Lamantia

Lani Lombardi, Esq.
Cleary Giacobbe Alfieri Jacobs LLC
5 Ravine Drive
Matawan, New Jersey 07747

Re: Michael S. Lamantia v. Howell Township
Block 175.04, Lot 7
Docket No. 007714-2016

Dear Mr. Lamantia and Counsel:

This is the court's decision following trial of the above captioned matter. Plaintiff contests the local property tax assessment on the above captioned property ("Subject") located in defendant ("Township") of $681,100.00 (allocated $205,500 to land, $475, 600 to improvements).

Plaintiff presented an appraisal expert witness, a licensed appraiser and a real estate broker, whose report was admitted into evidence without objection. Plaintiff's expert's value conclusion was $635,000, based on the sales comparison approach. The Township rested on the original assessment.

For the reasons stated below, the court agrees with plaintiff's expert's opinion that the value of the Subject for tax year 2016 is $635,000.

*

FACTS

The Subject is a lot measuring 0.93 acres, and is improved by a two-story colonial style, single-family residence built in 2002 with a gross living area ("GLA") of 4,022 square feet ("SF"). The Subject is located in the ARE2(Agriculture Rural Estate) zone, in a low-to-medium density neighborhood of single-family residences, and on a residential, non-through street (i.e., used to reach the residences only, not for public commute).

The exterior picture of the Subject shows that the house has a brick front, an attached garage, a paved driveway, and a well-kept, landscaped lawn. The two pictures of the interior provided to the court showed a partial view of the kitchen with an island, tiled floors, and wood kitchen cabinets, and a partial view of the living room showing a carpeted floor, high ceiling, and large windows overlooking foliage and trees. The expert opined the house's condition as average since almost all amenities and finishes were original (i.e., not upgraded).

After finding the Subject's Highest and Best Use to be its current residential use, plaintiff's expert presented six comparable sales as part of his sales comparison approach to valuing the Subject. He chose comparable sales based first on the assessment date, excluding sale prior to 2015. He noted that although Sale 1 sold one month after the assessment date, he chose it because the contract date was October 2015. He then emphasized the proximity to Subject noting most sales were close to the Subject, and Sale 5 (30 Lions Court) was in the Subject's neighborhood. He inspected the comparables from the exterior and relied on Multiple Listing Services ("MLS") for interior pictures.

The expert adjusted the comparable sales for GLA at $100 per SF ("PSF"). He arrived at this number by averaging the unadjusted PSF cost of the comparables (sale price divided by the

comparable's GLA) which was about $200 (rounded), and then taking 50% off, or $100. His formulation attempted to account for the economies of scale as well as the false inflation of the PSF cost caused by including the value of the land in the sale figure. His other adjustments included $1 PSF for lot size differences; -5% for condition (based on his several years of professional experience) for upgrades to kitchens and bathrooms, noting that five comparables were upgraded post-sale and were superior to the Subject in this regard; $15,000 for pool; and $25,000 for finished basement (all dollar amount adjustments being converted to a percentage in his comparison grid). The comparable sales provided were as follows:

	Proximity	GLA (SF)	Sale Date	Sale Price	GLA adj.	Lot Size Adj.	Condition adj.	Pool Adj.	Basement Adj.	Adjusted price
1	0.6 mi	3,282	11/30/15	$620,000	+11.9%	-2.8%	-5.0%	-2.4%	0	$630,529
2	1.5 mi	3,592	09/02/15	$605,000	+7.1%	-0.1%	-5.0%	-2.5%	-4.1%	$577,268
3	1.5 mi	2,680	06/16/15	$500,000	+26.8%	-8.0%	-5.0%	0	-5.0%	$544,078
4	1.4 mi	2,606	05/14/15	$605,000	+23.4%	-0.1%	0	-2.5%	-4.1%	$705,855
5	.02 mi	3,116	02/27/15	$645,000	+14.0%	0	-5.0%	0	-3.9%	$678,389
6	1.2 mi	3,059	02/11/15	$621,500	+15.5%	0	-5.0%	-2.4%	-4.0%	$646,677

He concluded a value for the Subject as $635,000 (noting the high, low, median, and mean adjusted prices). To check the comparability of the selected properties, plaintiff's expert calculated the mean and median of their unadjusted sales and analyzed the adjusted sales for any wide divergences. A wide divergence could indicate an improper adjustment rate or incomparable property, but he found no notable divergences. He noted that the higher mean and median of the adjusted sale prices (when compared to the mean and median of their unadjusted sale prices) was attributable to the Subject's larger GLA, however, this did not require rejection of the comparables.

FINDINGS

A complainant based on property value carries two burdens. First the plaintiff must overcome the assessment's presumed correctness. MSGW Real Estate Fund, L.L.C. v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373, 377 (Tax 1998). If this is not done, and where the taxing district makes no claim for adjustment (through counterclaim or evidence), the court can affirm the assessment. Id. at 378-79. Here the court finds that plaintiff's proffer of evidence through expert testimony, where the expert had made a value conclusion based upon recognized appraisal methods and with competent data of comparable sales, was sufficiently credible to overcome the presumptive correctness of the assessment.

If the presumptive correctness is found to be overcome, the plaintiff's second burden is to persuade the court what the correct value of the property should be. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 314-15 (1992). The court must determine the value "based on a fair preponderance of the evidence" provided by "both parties." Id. 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 Assocs. 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).

Thus, while the court "should be cognizant of the expense incurred by litigants in engaging an expert," and the required credible data "must be kept within practical and realistic limits," the court need not "accept an expert's opinion that is unsubstantiated." Glenn Wall Assoc., supra, 99 N.J. at 280; see Greenblatt v. City of Englewood, 26 N.J. Tax 41, 56 (Tax 2010) (rejecting expert's opinion as devoid of "whys" and "wherefores"). It can adopt or reject an expert's opinion "in whole or in part," City of Atlantic City v. Atlantic County Bd. of Tax'n, 2 N.J. Tax 30, 43 (Tax

1980), aff'd, 4 N.J. Tax 685 (App. Div. 1982), certif. denied, 93 N.J. 250 (1983), or arrive at a value "even if . . . contrary to" an expert's. Ford Motor, supra, 127 N.J. at 313.

The Township questioned the suitability of the six comparable sales as to size and proximity to Subject. The Subject had from 430 SF to 1416 SF more GLA than any of the comparables. Plaintiff's expert explained the disparity as a preference for sales with tighter proximity to the Subject and varied square footage, rather than identical square footage in a differently priced area, or from several years ago. The expert also adjusted for size according to the economies of scale. As to the proximity of the sold properties to the Subject, plaintiff's expert indicated that under certain guidelines, one mile may be the appropriate boundary for nearby comparable sales, but due to Township's low density and his preference for sales no earlier than 2015, he had to increase the scope of the search to 1.5 miles. The court finds the expert's explanations credible and finds his choice of comparables reasonable, especially where the Township proffered no proof of other or potentially better comparables, or evidence that the comparables were not sold at arms-length or otherwise deemed somehow non-usable by the assessor.[1]

The Township next questioned the expert's failure to adjust for differences in bathroom count, street location, presence of deck or patio, and garage size. The expert's response was that he made adjustments if, in his opinion, the feature was a value influencing feature, i.e. one which a buyer would pay for in the market. For instance, he said, the Subject's placement on a horseshoe street rather than a cul-de-sac, like some of the comparable properties, does not reflect a value

[1] A sale marked as non-usable "does not automatically mean that it was not a sale at market value," but raises concerns that it was "unlikely" to have been at "arms-length." Chadwick 99 Associates v. Director, Div. of Taxation, 24 N.J. Tax 493, 505 (Tax 2008) (citation and quotation omitted). Cf. N.J.A.C. 18:12-1.1(b) (allowing use of sales marked NU-26 "if after full investigation it clearly appears that the transaction was a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell, with all conditions requisite to a fair sale with the buyer and seller acting knowledgeably and for their own self-interests, and that the transaction meets all other requisites of a usable sale").

difference to a buyer, because neither are through-streets, therefore, as a non-value influencing difference, no adjustment was needed for street location. He explained a similar reasoning for his lack of adjustments based on the Subject's deck or three-car garage, as those features increase building cost but without a necessary correlation in resale value. As to lack of adjustment for bathroom count (the Subject having two full baths, while the comparables had from 2.5 to 4 baths), the expert claimed that bathrooms beyond 2.5 provide diminished return upon resale, thus, need not necessarily require any adjustment. However, he considered bathrooms and their upgrades in his condition adjustment.

The Township argues that the expert's reasons for not adjusting for the Subject's features of baths, deck, and garages, are not credible because they were bereft of market-data support, and also because the omitted adjustments, even if trivial in isolation, were a significant oversight in the aggregate. This is a reasonable argument. However, here, the proofs as a whole, i.e., sans adjustments for these features, show that the Subject was over-valued. Indeed, Sale 5, a home in the Subject's neighborhood, located 0.2 miles away, and about four years older than the Subject with four full baths (compared to the Subject's two full baths), sold for $645,000, which unadjusted sale price is not widely off the expert's value conclusion of $635,000 for the Subject. The court also notes that adjustments for bathroom and garage count could potentially offset, because while each comparable had a higher bathroom count (either an extra half-bath or an extra two full baths as in Sale 5 versus the Subject's two full baths) requiring a negative adjustment to the comparables' sale prices, each comparable except Sale 1 had 2-car garages, which would require an upward adjustment (as the Subject had a three-car garage). In other words, while the court agrees that the Subject's certain amenities could (as the expert conceded) be value influencing factors, and that the expert should have market data to support an adjustment or lack thereof for the same, here,

their absence does not influence or impact the value conclusion in so significant a degree that the court would have to reject the expert's value conclusion.

The court finds the expert's adjustments as provided reasonable, and his explanation of the same credible.

For the aforementioned reasons, the court agrees with the plaintiff's expert's value conclusion of $635,000. No adjustment for average ratio is required since the Township, as a participant in the Assessment Demonstration Program, N.J.S.A. 54:1-104, was in its third year of the annual re-assessment program having conducted its district-wide revaluation in 2013, thus, its average ratio was 100%.

Very Truly Yours,

Mala Sundar, J.T.C.