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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

**Mala Sundar**
**JUDGE**

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November 17, 2016

**BY FIRST-CLASS AND ELECTRONIC MAIL**
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Re: Michael Hammer v. Township of Howell
Block 41, Lot 13
Docket Nos. 008787-2015; 007777-2016

Dear Mr. Hammer and Counsel:

This letter constitutes the court's decision following trial of the above captioned matters. Plaintiff is owner of the above referenced property, his residence ("Subject") located on his 10-acre farm. For tax year 2015, defendant ("Township") assessed the Subject at $290,500 (allocated $55,000 land and $235,500 improvements). For tax year 2016, the assessment was $296,700 (allocated $55,000 land and $241,700 improvements). The Monmouth County Board of Taxation ("County Board") affirmed the assessments for each tax year, and plaintiff appealed the County Board's judgments to this court.

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Per plaintiff, he measured the land area supporting the residence (the "footprint") at about 0.279 acres, although he had noted the same as 1/10th of an acre on his farmland assessment application for 2015. The Subject was built in 1990, has three bedrooms, two baths, a breezeway, an attached two-car garage, and a detached barn/farm building. There is a natural liquefied gas storage facility ("Facility") about 800 feet from the Subject, which is apparently visible through the farmland/woods separating the Subject and the Facility (the aerial view of the same provided by Google and procured for plaintiff by a forester does not evidence this visibility). The Facility existed when plaintiff built the Subject, however, it has since been expanded. It generates noise and smell, and the Township's Master Plan apparently indicates the two miles around the facility as a danger zone. The zoning was changed to ARE-6 (Agricultural Rural Estate) due to the Facility's proximity, but plaintiff was unable to recollect when the change occurred.

Plaintiff's arguments were three-fold: (1) the land's allocated value of $55,000 translates to $550,000 per-acre (using the Subject's foot print at 1/10th of an acre), which is absurd since farmland just does not sell for that price; (2) the assessment must be reduced to account for the negative factors caused by the Facility, but it is impossible to obtain comparable sales to support such adjustment since farmhouses like the Subject are "one of a kind;" and (3) the value attributed to the detached farm building on the property assessment card is several times higher than the cost estimate he had procured from a third-party.

The assessor testified that pursuant to law, and Division of Taxation's regulations on farmland assessment, he was bound to treat the land under the Subject and the surrounding areas used in connection therewith as any other taxable home site, for purposes of uniformity in taxation. Until 2014, the land needed for the farmhouse was not so treated. In 2015, under the Assessment Demonstration Program (requiring all properties be assessed at 100% in a 5-year implementation

process, see N.J.S.A. 54:1-104 et seq.), the assessor changed the land value, noting that with the buffer and driveway, the land required for the farmhouse and its enjoyment would measure 0.36 acres (which would make the value per-acre about $165,000). He further noted that plaintiff did not provide any market evidence for an adjustment due to the Facility's proximity, and plaintiff's allegation that he received such a reduction in 2006 was unknown to him since he was not the Township's assessor at that time.

"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). If the court decides that the evidence proffered fails to overcome the presumptive correctness of an assessment, the complaint will be dismissed. If the court finds the presumption is overcome, then it must determine the value "based on a fair preponderance of the evidence." Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312-13 (1992). The plaintiff bears the burden to both overcome the presumptive correctness of the assessment, and thereafter to prove what the value should be. Id. at 314-15.

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. This is so regardless that the court accepts "as true" the plaintiff's proofs, and "accord[s] the plaintiff all legitimate inferences" from that evidence. Id. at 376.

Here, the court finds that plaintiff has not satisfied the initial burden. First, as to the land value allocation, the court finds the assessor's testimony explaining the assignment of $55,000 as credible, and in conformity with the requirements of the law. See N.J.S.A. 54:4-23.12 (a) ("the farmhouse and the land on which the farmhouse is located, together with the additional land used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and

procedures as other taxable structures and other land in the taxing district"); N.J.S.A. 54:4-23.11 (in calculating area qualified for farmland assessment, "land under and such additional land as may be actually used in connection with the farmhouse shall be excluded"); N.J.A.C. 18:15-4.4 ("Land on which a farmhouse is located, together with such land area as may be devoted to lawns, flower gardens, shrubs, swimming pools, tennis courts and like purposes related to the use and enjoyment of the farmhouse, are not deemed to be in agricultural or horticultural use and therefor are valued, assessed and taxed by the same standards, methods and procedures as other taxable land in the taxing district."). Plaintiff's only refutation was testimony that the $55,000 value allocation is absurd since it translates to $550,000 per-acre (using 1/10th an acre as land under the Subject). This is insufficient qualitatively or quantitatively, and in any event not credible since his own measurement of the perimeter was 0.279 acres, and the assessor's measurement was 0.36 acres.

Second, as to the adjustment for the Facility's proximity, the court does not have any competent, cogent, or credible evidence in support thereof. While it may be true that the Facility expanded in size and operation since the Subject's construction in 1990, the natural consequences of the operation of the Facility (noise, smell, hazards) must be balanced by the buffer between the Subject and the Facility. The google aerial view shows significant quantum of farmland/wooded lots around the Subject. Plaintiff's apparent argument that the area was rezoned to ARE-6 in response to the Facility's potential hazards is unsupported. Additionally, the zoning ordinance appears to contemplate not nearby hazards, but overdevelopment of agricultural or environmentally sensitive areas. The Township's Ordinance §188.69 states that the "purpose" of an ARE-6 zone is minimization of "impacts of developments in areas located outside of the centers identified in the Township's Master Plan," including areas constrained by "wetlands, floodplains,

rare and endangered species habitats," so that "rural and agricultural uses" and "rural character" are/is preserved.

The Tax Court's "right to make an independent assessment is not boundless," and must be "based on the evidence before it and the data that are properly at its disposal." Township of Warren v. Suffness, 225 N.J. Super. 399, 414 (App. Div.), certif. denied, 113 N.J. 640 (1988). Thus, the Tax Court cannot "arbitrarily assign a value to the property not supported in the record." Ibid. (citation and quotation marks omitted). In that case, the higher court upheld the Tax Court's provision of a 25% reduction to the improvement's value to account for the subject lots' proximity to a quarry, finding it "clearly logical and reasonable" since the "value of the improvement [would] be affected by adverse quarry conditions." Id. at 414. However, the reduction was also based on undisputed evidence on the record that the quarry operations, as of the assessment dates in question, caused noise, dust, and actual physical damage to the properties, for which the taxing district's expert had provided a 30% reduction to comparable land sales in two prior tax years. Ibid.

Here, there was no such credible evidence for the court to independently provide any value adjustment. Plaintiff's claim that he received a reduction in 2006 for the noise/smell from Facility was not corroborated in any manner.[1] More importantly, in Suffness, the adjustment was provided

[1] The court searched plaintiff's prior filings with this court and could not find any case filed for tax year 2006 for the Subject. A complaint was filed for tax year 2005 (Michael Hammer v. Township of Howell, Docket No. 005765-2005) but it related to Block 38, Lot 12 (740 Oak Glen Road). The complaint for tax year 2007 (Michael Hammer v. Township of Howell, Docket No. 009302-2007) related to Block 38, Lots 12.01 and 12.02 (740 Oak Glen Road). Another complaint for the same year (Michael Hammer v. Township of Howell, Docket No. 009305-2007) related to Block 37, Lot 29 (512 Oak Glen Road). The complaint for tax years 2010 and 2011 (Michael Hammer v. Township of Howell, Docket Nos. 019327-2010; 016545-2011) related to Block 53, Lot 20 (52 Maxim Road). The complaint for tax year 2012 (Michael Hammer v. Township of Howell, Docket No. 016104-2012) related to Block 35.92, Lot 42 (67 Danella Way). The complaint for tax years 2013 and 2014 (Michael Hammer v. Township of Howell, Docket Nos. 012523-2013; 007393-2014) related to Block 37, Lot 10.02 (Lanes Pond Road). A complaint for tax year 2015 (Michael Hammer v. Township of Howell, Docket No. 008788-2015) related to Block 35.92, Lot 5 (73 Brent Drive).

after the court accepted an expert's value conclusion based on credible evidence. Here, there was no evidence as to the fair market value of the Subject. Thus, seeking a reduction of the assessment, as plaintiff is doing here, is not implicit in, nor sanctioned under Suffness.

Plaintiff argued that he cannot find any sales comparable to the Subject for purposes of providing this court evidence of its fair market value. Per plaintiff, this was because the Subject was unique as a "vintage" farmhouse residence. Plaintiff's subjective view of the Subject's antiquity is not credible given its construction in 1990. Regardless, it is plaintiff's burden to prove value. If comparable sales are unavailable in the Township, he could research for the same in neighboring towns or other comparable farming community districts. Attempting to discredit the comparable sales selected by the Township but never proffered into evidence (since the Township rested on the assessment) does not satisfy plaintiff's burden. If plaintiff thought the farmhouse residence is "one-of-a-kind," he could attempt to use the cost approach method of valuation with the "whys and wherefores" in support thereof.[2] See Greenblatt v. City of Englewood, 26 N.J. Tax 41, 55 (Tax 2010). Plaintiff's request that this court decide value since plaintiff is not an expert does not obviate plaintiff's obligation to give this court credible competent evidence. Id. at 56 (while the Tax Court should apply its expertise to decide a property's value, it "can only" do so "when there is sufficient substantial and competent evidence in the record to support that determination.") (citing Glenn Wall Assoc. v. Township of Wall, 99 N.J. 265, 280 (1985)).

Last, plaintiff claimed that the value assigned on the property record card to the detached farm building exceeded its cost. Plaintiff's proof to show that the cost to build the structure was about half the value assigned to it on the property record card consisted of: 1) a Sales Agreement

[2] The property record card indicates that the assessor provided a 21% depreciation for physical condition of the Subject for both tax years.

signed by a builder in 2002, and by plaintiff, but without a date, and 2) another quote dated July 8, 2015. The court sustained the Township's objection to consideration of this evidence as hearsay since plaintiff did not proffer any individual from either of the entities providing the quotes as a witness in this litigation. See Evid. R. 801.[3]

**CONCLUSION**

For the aforementioned reasons, the judgments of the County Board for tax years 2015 and 2016 are affirmed.

Very truly yours,

/s/Mala Sundar, J.T.C.

[3] The property record card indicates that the assessor provided a 20% depreciation for physical condition of the structure.