

TAX COURT OF NEW JERSEY



Kathi F. Fiamingo
Judge

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NOT FOR PUBLICATION WITHOUT APPROVAL OF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

January 20, 2016

Ivan Arteaga
497 Eisenhower Court
Wyckoff, NJ 07481

Anthony Marchese, Esq.
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052

Re: Ivan Arteaga v. Township of Wyckoff
Docket No. 019196-2012, 017319-2013 & 014210-2015

Messrs. Arteaga and Marchese:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the judgment of the Bergen County Board of Taxation for the 2012, 2013 and 2015 tax years on plaintiff's single-family residence.¹ The court finds that plaintiff failed to prove by a preponderance of the evidence that the assessments in these years were incorrect because plaintiff's expert failed to provide this court with facts and data underlying his opinion of value. As a result, plaintiff's complaints are dismissed.

I. Procedural History and Factual Findings

The court makes the following findings of fact and conclusions of law based on the evidence and testimony offered at trial in this matter.

¹ Plaintiff did not appeal the assessment against the subject property for tax year 2014.

Plaintiff, Ivan Arteaga, is the owner of the single-family home located at 497 Eisenhower Court, Township of Wyckoff, County of Bergen and State of New Jersey identified on the tax map of the Township of Wyckoff (the “Township”) as Block 349, Lot 85 (the “subject property”). For the 2012 and 2013, the subject property was assessed as follows:

Land:	\$ 531,500
<u>Improvements:</u>	<u>403,500</u>
Total	\$ 935,000

The Township of Wyckoff engaged in a revaluation for tax year 2015. The assessment against the subject property as a result of that revaluation was as follows:

Land:	\$ 481,500
<u>Improvements:</u>	<u>473,100</u>
Total	\$ 954,600

The Township took the position at trial that the Chapter 123 ratio was 100% for each of the years under appeal and the assessments represented true value.

Plaintiff filed a petition of appeal with the Bergen County Board of Taxation (the “Board”) challenging the assessments on the subject property for tax years 2012, 2013 and 2015.

For 2012, the Board entered a Memorandum of Judgment reducing the assessment as follows:

Land:	\$ 531,500
<u>Improvements:</u>	<u>363,500</u>
Total	\$ 895,000

For tax year 2013, the Board affirmed the assessment.

For 2015, the Board entered judgment reducing the assessment as follows:

Land:	\$ 481,500
<u>Improvements:</u>	<u>420,100</u>
Total	\$ 901,600

Plaintiff filed timely complaints with the Tax Court contesting the Board's judgment for each year. At trial, plaintiff offered the testimony of a State of New Jersey certified general real estate appraiser who was accepted by defendant as an expert in the field of real estate valuation. The expert prepared appraisal reports for each of the years under review which were admitted into evidence without objection. Although the municipality presented its expert as a witness, the expert did not offer an opinion on value. He testified solely as to his measurement of the gross living area of the subject property.

The subject property is a center hall colonial single-family home, built around 1964 and expanded in the 1970's or 1980's. It is located at the entrance of a cul-de-sac on a lot containing some 27,935 square feet. The original improvement consists of nine rooms, including four bedrooms, two and one-half baths, an unfinished basement, a fire place, a porch and a deck. Additionally, there is an unheated porch consisting of approximately 288 square feet on the second floor. The subject has central air conditioning on the first floor only.

The addition contains approximately 1600 square feet of unheated storage/garage space on the first floor and a finished space of 400 square feet, including a full bath, on the second floor. This second floor area can only be accessed by exiting the main home area.

The Township's property record card lists the gross living area of the home at 4,131 square feet. Testimony revealed that this calculation includes an area on the second floor of the main home, which is an unheated porch, and that the heated living area in the home was 3,843 square feet. The discrepancy was the inclusion of the unheated porch at 288 square feet.

II. Plaintiff's Valuation Evidence

The first major discrepancy between the Township and the plaintiff's expert was the gross living area calculations of the subject property and the characterization of the addition to the home.

Plaintiff's expert viewed the addition as a storage shed which served no "useful purpose to the home." He determined its value as an additional two-car garage. He opined that a buyer would not want the storage shed and that the finished area above the first floor could not be considered gross living area (GLA) because it could not be accessed directly from the main home. As a result, in his opinion, a buyer would view the contributory value of the storage shed as an additional two car garage and a "finished attic with bath."

Plaintiff's expert determined the GLA of the subject property to be 3,508 square feet. He testified that he reviewed the property record card for the subject property which described the GLA of the home as 4,131 square feet but he did not know how the municipality had calculated the square footage of the subject property and did not consult anyone at the municipality to obtain an explanation. He assumed that the difference might be the inclusion of "finished attic" in the municipality's calculation of GLA.

Plaintiff's expert acknowledged that he did not measure GLA in accordance with the New Jersey Assessor Manual, but calculated GLA in accordance with "NC Standards," by including heated livable area above the basement and below the attic. He maintained that this was an appropriate measurement of the appraisal of market value because it was the manner in which most buyers would look at market value.

In taking measurements of the subject property, plaintiff's expert testified that he utilized a digital laser measuring device to determine square footage. He calibrated this device once a month by measuring an area in his office with a known size. He presented no manual or certification of accuracy for the device and was unaware if it had ever been deemed reliable in any court. He did not measure the subject property with a tape measurer as he deemed his laser measuring device accurate.

Plaintiff's expert employed the comparable sales approach to value the property as of the appropriate valuation dates and reached the following conclusions of value:

As of October 1, 2011:	\$735,000
As of October 1, 2012:	\$700,000
As of October 1, 2014:	\$775,000

Tax Year 2012

For tax year 2012, plaintiff's expert relied on the sale of three single-family homes in the Township of Wyckoff. The sale prices of the expert's comparable sales ranged from \$747,500 to \$770,000. After adjustments, the adjusted sale prices of the expert's comparable property sales ranged from \$659,474 to \$773,663.

Comparable sale one, located at 473 Ackersan Ave., Wyckoff, New Jersey, sold in May 2011, for a price of \$755,000. This comparable is a single-family home, located approximately .62 miles from the subject property at the end of a cul-de-sac on a 24,897 square foot lot. Comparable sale one contains 2,465 square feet GLA.

Plaintiff's expert made the following adjustments to the sale price of comparable sale one:

Location (cul-de-sac end)	-\$37,750
Condition	-\$18,875
Gross Living Area	\$56,214
Finished Basement	-\$20,000
Three-car Garage	\$ 7,500
Porch/Deck (Patio)	\$ 5,000
Finished Attic with Bath	\$25,000

In all, the plaintiff's expert made gross adjustments to the purchase price of \$170,339, or 23%, and net adjustments of \$17,089, or 2.3%, with a final adjusted sale price of \$772,089.

Comparable sale two, located at 360 Voorhis Ave., Wyckoff, New Jersey, sold in August 2011, for a price of \$770,000. This comparable is a single-family home, located approximately .78 miles from the subject property, and is situated on a 25,264 square foot lot. Comparable sale

two has GLA of 3,025 square feet.

Plaintiff's expert made the following adjustments to the sale price of comparable sale two:

Location (cul-de-sac end)	-\$38,500
Condition	-\$77,000
Room count (1/2 bath)	-\$ 5,000
Gross Living Area	\$25,974
Finished Basement	-\$20,000
Three-car garage	\$ 7,500
Fire place	-\$ 3,500
Finished Attic with Bath	\$25,000
In-Ground Pool	-\$25,000

In total, the plaintiff's expert made gross adjustments to the purchase price of \$227,474, or 30%, and net adjustments of -\$110,526, or 14%, to comparable sale two. The final adjusted sale price was \$659,474.

Comparable sale three, located at 184 Cottage Rd., Wyckoff, New Jersey, sold in March 2011 for a price of \$747,500. This comparable is a single-family home, located approximately .77 miles from the subject property, situated on a lot of 12,523 square feet. This comparable has a GLA of 2,598 square feet.

Plaintiff's expert made the following adjustments to the sale price of comparable sale three:

Location (cul-de-sac end)	-\$37,375
Site (size of lot)	\$35,381
Condition	-\$37,375
Gross Living Area	\$49,032
Finished Basement	-\$20,000
Three-car Garage	\$15,000
Enclosed Porch	-\$ 3,500
Finished Attic with Bath	\$25,000

In total, the plaintiff's expert made gross adjustments to the purchase price of \$222,663, or 30%, and net adjustments of \$26,163, or 3.5%, to comparable sale three. The final adjusted sale price was \$773,663.

Plaintiff's expert concluded a value of the subject property for the 2012 tax year of \$735,000.

Tax Year 2013

For tax year 2013, plaintiff's expert relied on the sale of three single-family homes in the Township of Wyckoff. The sale prices of the expert's comparable sales ranged from \$670,000 to \$841,000. After adjustments, the adjusted sale prices of the expert's comparable property sales ranged from \$527,444 to \$776,302.

Comparable sale one, located at 489 James Way, Wyckoff, New Jersey, sold in June 2012 for a price of \$670,000. This comparable is a single-family home, located approximately .61 miles from the subject property on a lot of 82,764 square feet with a lake or pond in the rear of the property. Comparable sale one contains 2,470 square feet of GLA.

Plaintiff's expert made the following adjustments to the sale price of comparable sale one:

Site (82,764 SF)	-\$106,000
View (lake at rear)	-\$ 20,000
Condition	-\$ 50,000
Room Count	-\$ 10,000
Gross Living Area	\$ 55,944
Finished Basement (Partial)	-\$ 10,000
Central Air (2 nd Floor)	-\$ 5,000
Two-car Garage	\$ 7,500
Porch/Deck	\$ 5,000
Finished Attic with Bath	\$ 25,000
Condition of Kitchen/Baths	-\$ 35,000

In all, the plaintiff's expert made gross adjustments to the purchase price of \$329,444, or 49%, and net adjustments of -\$142,556, or -21%, to comparable sale one. The final adjusted sale price was \$527,444.

Comparable sale two, located at 321 Martom Rd., Wyckoff, New Jersey, sold in March 2012 for a price of \$841,000. This comparable is a single-family home, located approximately .87

miles from the subject property, situated on a lot of 15,098 square feet. Comparable sale two has a GLA of 3,343 square feet.

Plaintiff's expert made the following adjustments to the sale price of comparable sale two:

Location	-\$10,500
Site (15,098 SF)	\$29,500
Condition	-\$50,000
Room count (1 bath)	-\$10,000
Gross Living Area	\$ 8,802
Finished Basement	-\$20,000
Central Air	-\$ 5,000
Two-car garage	\$ 7,500
Fireplace	-\$ 5,000
Finished Attic with Bath	\$25,000
Condition of Kitchen/Bath	-\$35,000

In all, the plaintiff's expert made gross adjustments to the purchase price of \$206,302, or 24.5%, and net adjustments of -\$64,698, or 8%, to comparable sale two. The final adjusted sale price was \$776,302.

Comparable sale three, located at 16A Coolidge Ter., Wyckoff, New Jersey, sold in August 2012 for a price of \$761,000. This comparable is a single-family home, located approximately .86 miles from the subject property and situated on a 11,250 square foot lot. This comparable has a GLA of 2,560 square feet.

Plaintiff's expert made the following adjustments to the sale price of comparable sale three:

Location (cul-de-sac end)	-\$19,000
Site (11,250 SF)	\$ 38,300
Condition	-\$ 50,000
Room Count	-\$ 5,000
Gross Living Area	\$ 51,084
Finished Basement	-\$ 20,000
Central Air	-\$ 5,000
One-car Garage	\$ 15,000
Finished Attic with Bath	\$ 25,000
Condition Kitchen/Bath	-\$ 35,000

In total, the plaintiff's expert made gross adjustments to the purchase price of \$263,384, or

35%, and net adjustments of -\$4,616, or .6%, to comparable sale three. The final adjusted sale price was \$756,384.

Plaintiff's expert conclusion of value of the subject property for 2013 was \$700,000.

Tax Year 2015

For tax year 2015, plaintiff's expert relied on the sale of three single-family homes in the Township of Wyckoff. The sale prices of the expert's comparable sales for this year ranged from \$725,000 to \$765,000. After adjustments, the adjusted sale prices of the expert's comparable property sales ranged from \$747,698 to \$803,787.

Comparable sale one, located at 542 Chestnut Ave., Wyckoff, New Jersey, sold in January 2014 for a price of \$735,000. This comparable is a single-family home, located approximately .95 miles from the subject property on a 25,281 square foot lot. This comparable contains 2,829 square feet of GLA.

Plaintiff's expert made the following adjustments to the sale price of comparable sale one:

Site (25,281 SF)	\$ 6,100
Condition	-\$20,000
Gross Living Area	\$36,558
Finished Basement (Partial)	-\$10,000
Central Air (2 nd Floor)	-\$ 5,000
Two-car garage	\$ 7,500
Porch/Deck	\$ 5,000
Finished Attic with Bath	\$25,000

In all, the plaintiff's expert made gross adjustments to the purchase price of \$115,158, or 16%, and net adjustments of \$45,158, or 6%, to comparable sale one. The final adjusted sale price was \$780,158.

Comparable sale two, located at 161 Cottage Rd., Wyckoff, New Jersey, sold in April 2014 for a price of \$765,000. This comparable is a single-family home, located approximately .88 miles

from the subject property, and situated on a lot of 8,960 square feet. Comparable sale two has a GLA of 2,628 square feet.

Plaintiff's expert made the following adjustments to the sale price of comparable sale two:

Location	-\$19,125
Site (8,960 SF)	\$43,000
Condition	-\$20,000
Gross Living Area	\$47,412
Finished Basement (Partial)	-\$10,000
Central Air	-\$ 5,000
Two-car garage	\$ 7,500
Patio	\$ 5,000
Finished Attic with Bath	\$25,000
Condition Kitchen/Bath	-\$35,000

In all, the plaintiff's expert made gross adjustments to the purchase price of \$217,037, or 28%, and net adjustments of \$38,787, or 5%, to comparable sale two. The final adjusted sale price was \$803,787.

Comparable sale three, located at 627 Quackenbush Ave., Wyckoff, New Jersey, sold in April 2014 for a price of \$725,000. This comparable is a single-family home, located approximately 1.44 miles from the subject property and is situated on a lot of 24,829 square feet. This comparable has a GLA of 2,679 square feet.

Plaintiff's expert made the following adjustments to the sale price of comparable sale three:

Location	-\$ 9,060
Site (24,829 SF)	\$ 7,100
Condition	-\$20,000
Gross Living Area	\$44,658
Finished Basement	-\$20,000
Central Air	-\$ 5,000
Finished Attic with Bath	\$25,000

In total, the plaintiff's expert made gross adjustments to the purchase price of \$130,818, or 18%, and net adjustments of \$22,698, or 3%, to comparable sale three. The final adjusted sale

price was \$747,698.

The plaintiff's expert concluded a value of the subject property for the 2015 tax year of \$775,000.

In supporting his adjustments, plaintiff's expert provided the following justification in each of his reports:

All adjustments are supported by pattern recognition of a collection of paired-sales data obtained by this appraiser over the past 38 years. This pattern recognition and data collected shows typical adjustments for individual features considering market areas, value structures, for specific property types, and typical adjustment found for specific categories. The collection of paired sales analyzed over long periods of time, and their adjustment dollars and/or percentages can show clear pattern of adjustments that can be relied on as reasonable estimates of market reaction differences. The collection of data and applicable conclusions remains in the appraiser's office files. The presentation of this data is beyond the scope of a summary appraisal form presentation requested by the client and the fee paid for this assignment. All adjustment utilized are supported by market data and reflect the estimated market reaction to differences where measurable and significant.

His adjustments for differences in GLA were determined at \$54 per square foot. He testified that he determined a building cost of \$100 per square foot against which he applied a factor for depreciation based on his determination of effective life span. No documentation was provided to support the building cost or depreciation factor.

The expert's report and testimony supported the difference in site size at \$100,000 per acre, but provided no data supporting this adjustment.

The condition adjustments (first for overall condition, then in the 2013 and 2015 valuation reports for kitchen and baths) were supported in the reports and testimony by indicating that the overall condition adjustment represented the cost to refresh the subject (painting and minor general repairs). The kitchen and bath condition adjustment was based on the cost to update a kitchen at

+/- \$25,000 and a bath at \$5,000. The expert did not inspect any of the comparable sales but determined the condition based on photos where available, exterior observations and realtor descriptions. No data was provided to support the value ascribed to the condition adjustments.

The expert adjusted for the “finished attic with bath” at \$25,000. He testified that in his opinion a buyer would consider this space in the same way he or she would consider a finished basement. He therefore made an adjustment of \$20,000 for the “finished basement” and added \$5,000 for the bath. The expert’s report provided nothing to support those adjustments other than the general statement that they were supported by his discussions with market participants and other realtors.

No independent market data or analysis was provided in the reports for any of the adjustments. The plaintiff’s expert testified that all of his adjustments were based on his experience and his discussions with various professionals on a daily basis about how buyers would view market value.

In general the expert provided no market analysis for any of the adjustments he made to any of the comparable sales.

II. Conclusions of Law

The court’s analysis begins with the well-established principle that “[o]riginal 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. MSGW Real Estate Fund, LLC, *supra*, 18 N.J. Tax at 373. That is, evidence “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). Therefore, at the close of plaintiff’s 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, in evaluating whether the evidence presented meets the “cogent evidence” standard, “must accept such evidence as true and accord the plaintiff all legitimate inferences which can be deduced from the evidence.” *Ibid.* (citing Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995)). However, the evidence presented, when viewed under the Brill standard “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.’” West 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)). “Only after the presumption is overcome with sufficient evidence . . . must the court ‘appraise the testimony, make a determination of true value and fix the assessment.’” Greenblatt v. Englewood City, 26 N.J. Tax 41, 52 (Tax 2011) (quoting

Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38–39 (App. Div. 1982)). If the court concludes that evidence sufficient to overcome the presumption of validity attached to the tax assessment has not been presented, judgment must be entered affirming the assessment. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992).

In the absence of a motion to dismiss under R. 4:37-2(b), the court is nonetheless required to decide if the plaintiff has overcome the presumption of validity. Thus, if the court independently concludes the plaintiff has not carried its requisite burden, dismissal of the action is warranted under R. 4:40-1, and the trial court need not engage in an evaluation of the evidence to make an independent determination of value. Accordingly, the court will evaluate and weigh the evidence presented to determine if plaintiff has met the requisite burden of persuading a change in the assessment.

For an expert’s testimony to be of any value to the trier of fact, it must have a proper foundation. See Peer v. City of Newark, 71 N.J. Super. 12, 21 (App. Div. 1961), certif. denied, 36 N.J. 300 (1962). When an expert “offers an opinion without providing specific underlying reasons . . . he ceases to be an aid to the trier of fact.” Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996). An expert witness is required to “give the why and wherefore of his expert opinion, not just a mere conclusion.” Id., at 540. The weight to be afforded an expert's testimony relative to adjustments “depends upon the facts and reasoning which form the basis of the opinion. An expert's conclusion can rise no higher than the data providing the foundation. (internal citation omitted). If the bases for the adjustments are not made evident the court cannot extrapolate value.” Inmar Associates v. Edison Township, 2 N.J. Tax 59, 66 (Tax 1980). “Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard.” Dworman v. Tinton

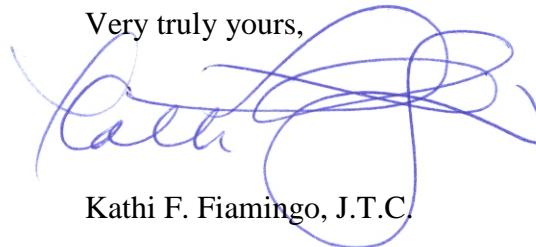
Falls, 1 N.J. Tax 445, 458 (Tax 1980) (citing Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959)).

As described above, plaintiff's expert provided no substantive factual evidence to support any of the adjustments made. While the court does not question the expert's experience and competence with regard to the matters before the court, the expert failed to provide this court with "sufficient and competent evidence from which the court can base a determination of true value." Greenblatt v. Englewood City, supra 26 N.J. Tax at 56. "Expert opinion unsupported by adequate facts has consistently been rejected by the Tax Court." Hull Junction Holding Corp. v. Princeton Borough, 16 N.J. Tax 68 (Tax 1996). While the court is mindful of its obligation "to apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question," "credible and competent evidence must be adduced in the trial record" in order to permit the court to make an independent finding of true value. Glen Wall Associates v. Tsp. of Wall, 99 N.J. 265, 280 (1985); TD Bank v. City of Hackensack, 28 N.J. Tax 363, 383 (Tax 2015). Here, the court was not provided with such evidence. As a result, the court has insufficient information from which to determine valuation.

III. Conclusion

The court finds that plaintiff failed to prove by a preponderance of the evidence that the assessments of the Bergen County Board of Taxation were incorrect. Therefore, the court will enter judgment dismissing plaintiff's Complaints.

Very truly yours,



Kathi F. Fiamingo, J.T.C.