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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

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BY E-MAIL AND FIRST-CLASS MAIL

Mrs. & Mr. Reznick, Self-Represented
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UPLOADED TO E-COURTS

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Re: Reznick et al. v. Township of Marlboro
Docket No. 008105-2016

Dear Plaintiffs and Counsel:

This letter constitutes the court's decision following trial of the above captioned matter. Plaintiffs own a residence ("Subject") located in defendant ("Township"). For 2016, the Subject's local property tax assessment was \$909,000. Upon plaintiffs' petition, the Monmouth County Board of Taxation ("County Board") reduced the assessment to \$862,800. Plaintiffs timely appealed the said judgment in this court seeking a reduction of the assessment to \$800,000.

At trial, plaintiffs relied upon five sales they claimed were comparable to the Subject. All sales were within the assessment date of October 1, 2015 and all were located in the Township.

The data sources as to the sale details were (1) the County Board’s website (<http://njactb.org>), which provides a web version of a property record card and basic physical characteristics of the property such as year built, size, and sale details (parties to sale; date of sale; purchase price; non-usable category if any); and (2) the Multiple Listing Services (“MLS”) printouts which included description of the physical characteristics and sale details of the comparables. Plaintiffs also provided the court with copies of exterior and interior photos of the Subject.

At the end of plaintiffs’ case, the Township moved to dismiss the complaint under R. 4:37-2(b). The Township contended that plaintiffs’ sole data source was the MLS, which was primarily advertisement, and since plaintiffs had no personal knowledge of the details of any of the comparable sales, nor had inspected the same, the complaint should be dismissed. The court granted the motion and stated that it would issue a written opinion in this regard.

The Subject was built in 2002 and is located in a development comprised of single-family homes. The 0.556-acre lot is improved with a two-story colonial home measuring 4,373 square feet (“SF”). The home contains four bedrooms; five bathrooms; partially finished basement; and a built-in garage. Additional features include a cathedral ceiling, a fireplace, and a deck (built by plaintiffs, who purchased the home in 2009). Plaintiff testified that the remaining amenities were original to the Subject and of builder’s grade, aside from granite countertops in the kitchen. Plaintiffs have replaced the windows due to their poor quality.

Plaintiffs’ five comparable sales were as follows:

	Address	Built	Lot Size	GLA	Sale Date	Sale Price	Room Count	Other
1	18 Totten Ct..	2001	0.75 acres	5,678 SF	05/15/15	\$919,000	5 bed; 5.5 bath	3-car garage
2	225 Tracy Dr.	1991	0.55 acres	4,699 SF	08/24/15	\$820,000	5 bed; 3.1 bath	4-car garage
3	3 Rodeo Dr.	1998	0.65 acres	4,787 SF	06/25/15	\$888,500	4 bed; 3.1 bath	Pool; patio; gazebo; 3-car garage
4	206 Doe Trail	1994	2.69 acres	4,910 SF	06/01/15	\$840,000	5 bed; 4 bath	3-car garage
5	415 Fawns Run	1995	4.14 acres	4,814 SF	06/29/15	\$855,000	4 bed; 2.1 bath	3-car garage; pool; patio

Plaintiffs had not personally inspected the interiors of any comparable, and performed an exterior observation for the first three comparables. They agreed that Comparables 4 and 5 were not in the same community as the Subject. They made no market-based adjustments for the differences in amenities, size, or age. They claimed Comparable 3, though not in the same development as the Subject, to be most similar, however, since it had larger space and additional features, it could not be isolated for purposes of arriving at the Subject's value. Rather, they claimed that the Subject's value should be \$800,000 based on the average of the sale prices of all comparables.¹

ANALYSIS

“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 presumptive correctness is overcome, it can find value based “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). The complainant bears the burden of persuading the court that the “judgment under review” is erroneous. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 314-15 (1992).

The proof, for residential properties, is generally a presentation of a sufficient sample of credible comparable sales sold proximate to the assessment date. Appraisal Institute, The Appraisal of Real Estate 377 (14th ed. 2013) (value is derived “by comparing” similar properties “that have recently sold, listed for sale, or are under contract”). Comparison, for valuation purposes, requires analysis of “similarities and differences that affect value,” for example, sale

¹ The average of the comparable sale prices is \$864,500, thus, higher than the County Board's judgment. Plaintiffs stated that using the per SF price of Comparable 3, the one most similar to the Subject, as applied to the Subject's gross living area, provided a value of \$811,659 ($\$888,500 \div 4,787 \text{ SF} = \$185.600 \times 4,373 \text{ SF}$). Since this was higher than the \$800,000 sought, they maintained that an average of all five comparables must be used.

terms, market conditions, or physical characteristics. Id. at 378. Market evidence must support any element of comparison that causes “value differences.” Ibid.

Plaintiffs’ proofs offered to overcome the presumptive correctness of the assessment were problematic because of their predominant reliance upon the MLS’ descriptions of the comparables. Plaintiffs claimed that using MLS was sanctioned by the Tax Court’s Small Claims Case Handbook.² The court’s review of the same found no such sanction, let alone a mention of or reference to MLS property listings.

In any event, the court has repeatedly noted that a wholesale reliance upon information provided by the MLS as credible indicia of either comparability or value is questionable, since MLS listings are primarily advertisement mechanisms. Those listings themselves note that the information while “reliable” is not “guaranteed.” This is because the information therein is based upon a realtor’s rendition of data based upon his or her inspection and opinion, and can include information provided by unidentified, and sometimes unsophisticated, third parties and can be erroneous or speculative.³

Thus, information from the MLS listings may be credible when actually and independently verified with someone who has personal knowledge of the same combined with a personal inspection of the interior and exterior. It does not become credible, as plaintiffs posited, because opinions of other nearby residents confirmed the comparable/s’ superior features, or because one “knows” from viewing the exterior that the comparable has to be superior. Not only are such opinions unreliable hearsay, but they do not allow a finding of “value differences” caused by such

² Available at http://www.judiciary.state.nj.us/forms/10190_small_claims_booklet.pdf.

³ A similar caveat is included in the NJACTB’s website. See VBV Realty, L.L.C. v. Township of Scotch Plains, ___ N.J. Tax ___ (2017), 2017 N.J. Tax LEXIS 2 (Tax Jan. 3, 2017) (website “contains an express ‘Disclaimer and Limitation of Liability’ . . . [that] states, in part, that the ‘information [is] not warranted or guaranteed in any way’”) (approved for publication).

elements of comparison. See also The Appraisal of Real Estate, *supra*, at 119 (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); N.J.S.A. 2A:83-1 (a witness providing testimony relating to comparable sales should obtain information from the “owner, seller, purchaser, lessee or occupant . . . or from information obtained from the broker or brokers or attorney or attorneys who negotiated or who are familiar with or cognizant of such sales”).

Here, there was no personal inspection nor any attempt to independently verify the details of any sale. Plaintiffs were unable to explain why Comparable 2 was on the market for only 18 days, while Comparable 3 was on for 215 days. In the absence of credible reliable verification, the court finds that plaintiffs’ sole reliance on the MLS data is not credible nor sufficient for the court to be able to arrive at a value conclusion for the Subject.

Additionally, plaintiffs’ made no attempt to make adjustments for inferior or superior features of the Subject vis-à-vis the comparables. Making such adjustments, which must be market-based, is an essential element of the sales comparison approach unless it can be shown that adjustments are unnecessary and will not compromise the value conclusion. Averaging the unadjusted sale prices of the comparables to conclude value is an inappropriate shortcut to the valuation process.⁴

The court is mindful that it must strive to find value. However, as stated in Township of Warren v. Suffness, 225 N.J. Super. 399, 413-14 (App. Div. 1988), “the Tax Court’s right to make an independent assessment is not boundless,” but must be “based on the evidence before it and the

⁴ The average of the unadjusted sale prices of the five comparables is \$864,500. Plaintiffs provided no market evidence to show that the comparables’ alleged superior features translate to a “value difference” of \$64,500, thus, requiring reduction of the assessment to \$800,000, the amount they sought in this appeal.

data that are properly at its disposal.” (citation and quotation marks omitted). Thus, the court cannot “arbitrarily assign a value to the property not supported in the record.” Ibid. (citation and quotation marks omitted). Here, there was no such credible evidence for the court to independently conclude 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 to reflect the average of 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 court finds that plaintiffs have failed to produce sufficient evidence to overcome the presumptive validity of the judgment of the County Board. An Order affirming the County Board’s judgment will accompany this opinion.

Very truly yours,


Mala Sundar, J.T.C.