TAX COURT OF NEW JERSEY

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THE TAX COURT COMMITTEE ON OPINIONS

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Re: Susan Lane Trust v. Township of Wyckoff
Docket No. 013954-2015

Counsel:

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 2015 tax year on plaintiff's single-family residence. The court finds that plaintiff failed to present credible and reliable evidence sufficient to raise a debatable question as to the validity of the assessment on the subject property. As a result, plaintiff's complaint is dismissed and the assessment of the Bergen County Board of Taxation is affirmed.

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.

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For the year under review, plaintiff, Susan Lane Trust, was the owner of the single-family home located at 751 Highview Drive, Township of Wyckoff, County of Bergen and State of New Jersey identified on the tax map of the Township of Wyckoff as Block 425, Lot 44 (the "subject property.")[1]

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

Land:	$ 660,300
Improvements:	415,700
Total	$1,076,000

Plaintiff filed a petition of appeal with the Bergen County Board of Taxation (the "Board") challenging the assessment and the, the Board entered a Memorandum of Judgment reducing the assessment as follows:

Land:	$ 660,300
Improvements:	375,000
Total	$1,035,300

Plaintiff filed a timely complaint with the Tax Court contesting the Board's judgment. 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 an appraisal report, which was 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 certain photographs he had taken of the residence constituting the subject property.

[1] The complaint, as initially filed, reflected "Susan Lane" as the taxpayer. During the course of the proceedings leading up to trial, it was determined that the owner of the subject property was in fact the Susan Lane Trust. At trial, a motion to amend the complaint to reflect the correct owner was granted.

The subject property is a colonial style single-family home, built around the 1960's, with an addition built in the 1980's. It is located in the Sicomac neighborhood of Wyckoff Township, an area with a mixture of older homes and newer, larger houses.

Little testimony was provided by plaintiff as to the current improvement on the lot of the subject property. The following information regarding the home was obtained from the plaintiff's expert's report. The home was originally constructed in 1961, with additions constructed in the 1970's and early 1980's. The exterior was finished with the original wood clapboard siding, in need of repair in several areas, and an asphalt shingle roof. The report further indicates that the home contains five bedrooms, including one on the first floor of the subject property. A large master bedroom was added in the 1980's, including a master bath. The remaining two and ½ baths are original to the home. The kitchen is "older." There is a partially finished basement and an attached two-car garage. The home contains a fire place, which the expert indicated "does not currently work," a den with a glassed atrium constructed in the 1970's. According to the expert's report, the property has had little updating since the 1980's and was considered in "fair" condition by the expert due to its lack of updating and need for repair.

The expert opined that "[t]he subject property is considered to be of overall below average quality for a residential dwelling in this neighborhood in Wyckoff. The utility of the improvements is functionally obsolescent since the house is older, has an unconventional layout and is need (sic) of repair and updating."

The lot contains 27,308 square feet. The property is located in an RA-25 zone and the lot is compliant in the zone for a single family home.

The defendant presented its expert who testified only to the authenticity of a number of photographs the expert had taken of the interior and exterior of the home which were entered into evidence.

II. Plaintiff's Valuation Evidence

The expert determined that the highest and best use of the subject property was the "demolition and construction of a new, larger house with a more modern layout. While it is physically possible for the current house to remain in place, the more prudent investment would be to demolish the current house to construct a new one which is up to current standards."

In reaching that opinion, plaintiff's expert testified that she had researched the sale of 1960-era homes in the neighborhood and determined most had been renovated/demolished. None of the data supporting that observation was included in the report, nor did the expert provide any further illumination of that research in her testimony.

Plaintiff's expert employed the comparable sales approach to value the property as of the appropriate valuation date and concluded that as of October 1, 2014, the subject property had a value of $750,000. In reaching that opinion, the expert relied on the sale of four properties, all of which were sold with a house in place that was subsequently demolished to allow for new construction. No information was provided regarding the homes that existed on the comparable sale properties at the time of purchase. Thus, the condition of the homes on the comparable properties and their comparability to that of the subject property was unknown.

The unadjusted sales prices for the four sales ranged from $735,000 to $800,000. The expert made a single adjustment to one comparable sale due to its size. In that adjustment, the expert made a -5 percent adjustment to account for a lot size roughly 35 percent larger than the subject property (45,002 square feet for the comparable sale versus 27,308 at the subject property.)

When questioned as to the methodology employed in reaching a 5 percent adjustment for the size of the comparable sale, the expert indicated that she employed a paired sales analysis using the sales in her comparable sales grid.[2] The expert did not expound upon her conclusions or how the results of her paired sales analysis resulted in the adjustment. In reviewing the sales, Comparable Sale 1 reflects an unadjusted purchase price of $830,000. Comparable Sales 2 through 4 with substantially similar lot sizes to the subject property reflect unadjusted sales prices of $735,000, $790,000, and $800,000, respectively.

On cross-examination, the expert conceded that in reaching her opinion on the highest and best use of the subject property, she did not provide any estimate of costs of demolition, nor did she consider the interim use of the home. She testified that due to the age of the home she did not consider the cost approach in determining value. She further agreed that she did not have any cost estimates to support her opinion that, "[i]f someone were to buy the property to reside in the home, they would likely spend upwards of $200,000 to bring it up to today's standards." She did not provide any further indication of why that would militate in favor of demolition and reconstruction rather than renovation. As noted, she provided no indication of the value of the home at the subject property, the cost to construct a new home, or any data to support her renovation costs.

The expert maintained that she did research 1960 era homes in the neighborhood which sold and determined that most were renovated. She acknowledged, however, that none of that research was in her report. She further acknowledged that in her determination of value for the subject property she gave "zero value" to the house at the subject property. Although the expert

[2] The expert's report indicated that the Lot Size adjustment was determined as follows: "Sale #1 had a larger than average lot size for the neighborhood and would be very attractive to buyers and developers alike. As such, this sale required a downward adjustment for its larger size since it would be more appealing than the subject property." The expert did not explain why the report did not reflect the paired sales analysis, nor was she questioned on the lack of that explanation in the report.

testified that she researched sales of existing homes, she did not include those sales in her report because she determined that the homes were not comparable. She did not explain why the homes were not comparable.

When asked by the court how she had determined that the comparable sales in her report were arms-length transactions, the expert testified that she relied on tax records and "drive-bys." She did not contact any of the parties in the transactions to confirm the details of the transactions or to determine if there were any situations which would call the arms-length nature of the transactions into question. She testified that she reviewed the NU codes of the comparable sales and did not find any that would cause her to question the transactions, although she could not provide any specifics about the NU codes of the comparable sales during her testimony.

III 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 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)). The evidence presented, however, 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).

At the close of plaintiff's case, the defendant made a motion to dismiss for plaintiff's failure to overcome the presumption of correctness. The court reserved on that motion. As noted, the defense did not present evidence of value but rested after submitting photos of the improvement on the subject property.

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), certif. denied, 145 N.J. 374 (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. 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) (internal citations omitted.) "Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 458 (Tax 1980), certif denied, 88 N.J. 498 (1981) (citing Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959)). Furthermore, "[e]xpert 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, 98 (Tax 1996).

It is indisputable that for property tax assessment purposes property must be valued at its highest and best use. Ford Motor Co., supra, 127 N.J. at 300–01. All possible uses are to be examined and the one yielding the highest return should be selected. Inmar Associates, supra, 2

N.J. Tax at 64. "The concept of highest and best use is not only fundamental to valuation but is a crucial determination of market value. This is why it is the first and most important step in the valuation process." Ford Motor Co. v. Township of Edison, 10 N.J. Tax 153, 161 (Tax 1988), aff'd, 12 N.J. Tax 244 (App. Div. 1990), aff'd, 12 N.J. 290, (1992).

> The general rule in real property taxation is that property must be valued "in the actual condition in which the owner holds it." Newark v. West Milford, 9 N.J. 295, 304, 88 A.2d 211; Colwell v. Abbott, 42 N.J. L. 111, 115 (Sup. Ct. 1880). However, this general concept is modified to avoid a disproportionate share of the burden of taxation falling upon the other taxpayers when "its value in that condition is affected by what can be done with the property." Delaware, L & W R. Co. v. Hoboken, 16 N.J. Super. 543, 570, 85 A.2d 200 (App. Div. 1951), rev'd on other grounds, 10 N.J. 418, 91 A.2d 739 (1952). The property should be examined for all possible uses and that use which will yield the highest return should be selected. Inmar Associates, Inc. v. Edison Tp., supra, 2 N.J. Tax at 64.
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> [Owens-Illinois Glass Company v. Bridgeton, 8 N.J. Tax 495, 501-02 (Tax 1986).]
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> If a party seeks to demonstrate that a property's highest and best use is other than its current use, it is incumbent upon that party to establish that proposition by a fair preponderance of the evidence. Property should be assessed in the condition in which it is utilized and the burden is on the person claiming otherwise to establish differently. (internal citations omitted.)
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> [Clemente v. Township of South Hackensack, 27 N.J. Tax 255, 269 (Tax 2013), aff'd, 28 N.J. Tax 337 (App. Div. 2015).]

Plaintiff's expert opined that the highest and best use of the subject property was the "demolition and construction of a new, larger house with a more modern layout." It was plaintiff's burden to establish that the highest and best use was for redevelopment. Although plaintiff's expert suggested that she analyzed similar aged homes and their sale and demolition to support her conclusion, she did not provide this court with any data to support this conclusion. Certainly no evidence was provided to support the conclusion that demolition and reconstruction was financially feasible or maximally productive.

No analysis was provided that the demolition of the existing home and construction of a new home was economically feasible. In fact, plaintiff's expert acknowledged that she had not provided costs to demolish the existing structure nor determined the construction costs of the new home. The court has no basis upon which to determine whether the highest and best use as opined by the expert would yield a higher return than the subject property's current use. See, Inmar Associates, Inc., supra, 2 N.J. Tax at 64.

Plaintiff has failed to carry its burden of proof as to the highest and best use of the subject property. That defect alone requires that the court find that the plaintiff has failed to overcome the presumption of correctness of the judgment since plaintiff's opinion of value rests on that determination.

Furthermore, plaintiff's expert's conclusions were based on transactions which the expert failed to verify, confirm or corroborate with anyone possessing any firsthand knowledge of those transactions. Plaintiff's expert testified that she relied on the tax records and drive-bys in verifying the transactions and did not speak with any of the participants in the transactions.

> Whether a sales transaction can be considered a reliable indicator of fair market value depends on an analysis of the following criteria: (i) whether the buyer or the seller were unusually motivated, (ii) whether the buyer and seller were well-advised and acting prudently, (iii) the length of time that the property was exposed to an open and competitive marketplace, (iv) whether the purchase price was paid in cash, and (v) whether the purchase price was affected by special or creative financing. (internal citations omitted.)
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> [VBV Realty, LLC v. Scotch Plains Twp., 29 N.J. Tax 548, 562-63 (2017).]

Since plaintiff's expert did not verify any of the comparable sales utilized by her in her analysis, none of the indicia of reliability have been put before the court.

For all of the foregoing reasons, the court finds that the presumption of correctness stands.

III. Conclusion

The court finds that plaintiff failed to overcome the presumption of correctness of the judgment of the Bergen County Board of Taxation were incorrect. Therefore, plaintiff's complaint is dismissed and the assessment is affirmed.

Very truly yours,

/s/Kathi F. Fiamingo, J.T.C.