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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida  
Presiding Judge



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November 30, 2011

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Thomas P. Farnoly, Esq.  
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Re: Anthony Kula and Mary Steinhauer-Kula v.  
Township of Downe  
Docket No. 013984-2009

Dear Mr. and Mrs. Kula and Mr. Farnoly:

This letter constitutes the court's opinion after trial in the above-referenced matter. Plaintiffs challenge the assessment on their one-family residence in Downe Township for tax year 2009. For the reasons explained more fully below, the assessment on the subject property will be reduced.

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I. Findings of Fact and Procedural History

This letter opinion sets forth the court’s findings of fact and conclusions of law after trial.

R. 1:7-4.

Plaintiffs Anthony Kula and Mary Steinhauer-Kula are the owners of a residence in defendant Township of Downe. The property is designated by the township as Block 56, Lot 14 and is known as 186 Fortescue Road. Following a municipal-wide revaluation for tax year 2009 the property was assessed as follows:

Land	\$ 36,000
Improvements	<u>\$341,700</u>
Total	\$377,700

On June 24, 2009, the Cumberland County Board of Taxation issued a Judgment reducing the assessment as follows:

Land	\$ 36,000
Improvements	<u>\$292,600</u>
Total	\$328,600

On August 14, 2009, plaintiffs filed a Complaint in this court challenging the board’s determination.

The subject property is a single-family residence with 3,642 square feet of living space. Approximately 1,848 square feet of the home consists of a farm house constructed in 1858. That portion of the home is two stories high and has three bedrooms and two bathrooms. On October 1, 2008, the relevant valuation date, the older section of the home was in below average condition. Water damage was apparent on ceilings, doorways were narrow, floors were uneven, the electrical system was outdated, and a partial ceiling collapse interfered with use of one of the bathrooms. A large addition consisting of four rooms in 1,794 square feet of living space was added to the house in 2006. The condition of the addition, which contains two bedrooms, a

family room, a den and a bathroom, is good. The addition has central air conditioning; the older portion of the home does not. In addition, as of the valuation date, the heating system for the home was 25 to 30 years old and was located in the original farm house. The addition was heated by a coal stove. The home has a deck, a porch and a patio, but no basement or garage. A small shed is located on the property, which consists of .75 acres. The home is located in a rural area of the township.

Plaintiffs produced evidence of five comparable sales, all located in Downe Township. The comparable sales were selected by Mrs. Steinhauer-Kula after her examination of deeds, multiple listings, and tax records associated with a larger number of residential sales in the municipality. Although plaintiffs could not offer definitive evidence that the sales were arm's length transactions, Mrs. Steinhauer-Kula credibly testified that she eliminated from consideration sales between family members and for nominal consideration. In addition, she credibly testified that she saw no indication in the materials that she reviewed that any of the five comparable sales on which plaintiffs relied were anything other than arm's length transactions. Defendant introduced no evidence suggesting that plaintiffs' comparable sales were not the result of legitimate negotiations between a willing seller and a willing buyer.

Plaintiffs incorporated their comparable sales in a sales comparison grid, which included adjustments to the sales prices. It appears that the adjustments reflect the opinion of Mrs. Steinhauer-Kula, who is not an expert in real estate appraisal. Generally, a non-expert witness may not offer opinion evidence. However, the standards for submission of proof are relaxed in this court's small claims division, to which this matter is assigned. See R. 8:11 (providing that all local property tax cases concerning one through four family residences to be heard in Small Claims Division of Tax Court) and N.J.S.A. 2B:13-15 ("Hearings in the Small Claims Division

shall be informal, and the judge may receive evidence as the judge deems appropriate for a determination of the case, except that all testimony shall be given under oath.”). In addition, plaintiffs used in their adjustment grid the same adjustment amounts used by defendant’s expert and by the revaluation company on field data sheets during the mass appraisal process. There is, therefore, evidence in the record that the municipality agrees that plaintiffs’ adjustment amounts are appropriate. The court concludes that plaintiffs’ adjustment grid is “appropriate for a determination of the case” pursuant to N.J.S.A. 2B:13-15. The grid is accepted into evidence.

As noted above, all five of plaintiffs’ comparable sales are of homes in Downe Township. This fact is significant in light of the township’s reliance only on comparable sales of homes from other municipalities. Three of plaintiffs’ comparable sales are from the Newport section of Downe Township, where the subject property is located. Two other comparable sales are located in the Fortescue section of the municipality. The Fortescue section is closer to the banks of the Delaware River, has few year-round residents and is comprised mostly of vacation homes. The trial record contains credible evidence that the real estate market in the Fortescue neighborhood is susceptible to pressures affecting the “second home” market. Similar pressures are not present in the Newport section of the township, which is more rural and less affluent in nature.

The three Newport section homes upon which plaintiffs rely are considerably smaller than the subject property at between 1,548 square feet and 1,959 square feet. In addition, those homes have three bedrooms, while the subject property has five bedrooms. Plaintiffs’ comparable sale number one, which Mrs. Steinhauer-Kula credibly testified was most similar to the subject property, is an old farm house that was gutted and rehabilitated in 1997.

Plaintiffs took two approaches in their adjustment grid with respect to the condition of the subject property. The conditions of the two portions of plaintiffs’ house differ widely. On the

one hand, it is plain from the evidence that the 1858 farm house, which accounts for approximately half of the total living space, is in below average condition. On the other hand, the addition, which also accounts for approximately half of the living space in the home, was in good condition on October 1, 2008. Plaintiffs contend that the home should be considered to be in average condition because the old portion of the home contains vital living amenities including the kitchen and the heating system.

To account for the unusual circumstances at the subject property, plaintiffs produced two opinions of value, one considering the subject property to be in average condition and the other considering the subject property to be in above average condition. According to plaintiffs' adjustment grid, when the subject property is considered to be in average condition, the comparable sales from the Newport section of the township, after adjustments, range from \$206,120 to \$233,975 and the two comparable sales from the Fortescue section of the township range from \$161,050 to \$180,200 (these include sizable downward adjustments of over \$195,000 to account for differences in lot size and the superior waterside views at the comparable sales). Plaintiffs averaged the adjusted sales prices to offer the opinion that the subject property has a true market value of \$199,539.

When the subject property is considered to be in above average condition, the three comparable sales from the Newport section of the township, after adjustments, range from \$226,120 to \$253,975 and the two comparable sales from the Fortescue section range from \$181,050 to \$200,200 (including the sizable adjustments noted in the preceding sentence). Under this approach, plaintiffs averaged the adjusted sales prices to offer the opinion that the subject property had a true market value of \$219,539.

Defendant's expert appraiser relied on four comparable sales, none of which are located in Downe Township. Two of defendant's comparable sales are located in Lawrence Township, which borders Downe Township. The expert credibly testified that the two municipalities are similar, but that Lawrence Township is close to two correctional facilities, which are major employers in the area. This proximity to employment opportunities results in greater interest and activity in the Lawrence Township real estate market. One of defendant's comparable sales is located on Main Street in Millville City, a commercial center north of Downe Township. Defendant's expert describes Main Street in Millville as "a major east-west thoroughfare." The fourth comparable sale offered by defendant is located in Upper Deerfield Township, over 15 miles from the subject property. Defendant's expert describes Upper Deerfield as having higher "land values" than Downe Township. Two of defendant's comparable sales took place after the valuation date, including one sale in January 2009. According to the report of defendant's expert, the unique nature of the subject property required the expert to "exceed distance, time and adjustment parameters in order to be able to utilize the most appropriate comparables."

Defendant's expert considered the subject property to be in slightly above average condition. After making adjustments to account for location, amount of living space, room count and other relevant characteristics, defendant's expert offered the view that the comparable sales had adjusted sales prices ranging from \$314,900 to \$343,000. After weighing the adjusted sales prices, defendant's expert offered the opinion that the subject property had a true market value of \$330,000 as of October 1, 2008.

On cross-examination, plaintiffs extracted significant testimony challenging the credibility of defendant's expert's opinion. In June 2009, when the matter was before the county board of taxation, defendant's expert submitted a report offering an opinion of the true market

value of plaintiff's home. That report relied on the same comparable sales from Lawrence Township and Millville City on which defendant's expert relied before this court. However, a comparison of the two reports reveals that the expert's adjusted sales price for each of the three comparable sales differed in the two reports. A third report of defendant's expert was produced during discovery. It appears that that report was not introduced as evidence before the board and may have been a draft report.

With respect to defendant's comparable sale number one at 715 Ramah Road in Lawrence, the report submitted to the county board has no adjustment for land size, the report submitted to this court has a negative \$6,000 adjustment for land size and the report produced during discovery has a negative \$8,000 adjustment for land size. In addition, the report submitted to the county board has a positive \$6,000 adjustment for living space as does the report submitted to this court. However, the report produced during discovery contains a positive \$9,000 adjustment for living space. Moreover, the report submitted to the county board characterizes the comparable sale as being in a superior location, requiring a negative \$10,000 adjustment, as does the report submitted to this court. The report produced during discovery characterizes the comparable sale as being in an average location requiring no adjustment.

With respect to defendant's comparable sale number two at 503 Newport Road in Lawrence, the report submitted to the county board states that the home has 1,640 square feet of living space, requiring a positive \$50,000 adjustment. The report submitted to this court states that the home has 3,280 square feet of living space, requiring a positive \$9,000 adjustment. The report produced during discovery states that the comparable sale has 1,640 square feet of living space, requiring a positive \$70,000 adjustment. The report submitted to the county board indicates that the comparable sale has a basement and finished rooms below grade requiring a

negative \$35,000 adjustment. The report submitted to this court indicates that the comparable sale has no basement, is built on a slab and requires no adjustment. The report produced during discovery indicates that the comparable sale has a basement and finished rooms below grade requiring a negative adjustment of \$23,000. Moreover, the report submitted to the county board characterizes the comparable sale as being in a superior location, requiring a negative \$10,000 adjustment, as does the report submitted to this court. The report produced during discovery characterizes the comparable sale as being in an average location requiring no adjustment.

With respect to defendant's comparable sale number three on Main Street in Millville, the report submitted to the county board indicates that the comparable sale was in a superior location, requiring a negative adjustment of \$20,000. The report submitted to this court states that the comparable was in an average location, requiring no adjustment. In addition, the report submitted to the county board contains no land adjustment for this comparable sale. The report submitted to this court contains a negative \$14,000 land adjustment. The report produced during discovery indicates that a negative \$18,000 land adjustment is warranted. The report submitted to the county board states that a positive \$37,000 size adjustment was necessary for this comparable sale, as does the report submitted to this court. The report produced during discovery indicates that a positive \$51,000 size adjustment is warranted for this comparable sale.

## 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). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

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. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be “definite, positive and certain in quality and quantity to overcome the presumption.”

Ibid. (quoting Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985)(citations omitted)).

The presumption of correctness arises from the view “that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law.” Pantasote, supra, 100 N.J. at 413 (citing Powder Mill, I Assocs. v. Township of Hamilton, 3 N.J. Tax 439 (Tax 1981)); see also Byram Twp. v. Western World, Inc., 111 N.J. 222 (1988). The presumption remains “in place even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity.” Transcontinental Gas Pipe Line Corp. v. Township of Bernards, 111 N.J. 507, 517 (1988)(citation omitted).

“In the absence of a R. 4:37-2(b) motion . . . the presumption of validity remains in the case through the close of all proofs.” MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 377. In making the determination of whether the presumption has been overcome, the court should weigh and analyze the evidence “as if a motion for judgment at the close of all the evidence had been made pursuant to R. 4:40-1 (whether or not the defendant or plaintiff actually so moves), employing the evidentiary standard applicable to such a motion.” Ibid. The court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence. Id. at 376 (citing Brill v. Guardian Life Ins. Co. of Am.,

142 N.J. 520, 535 (1995)). In order to overcome the presumption, the evidence “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.), certif. denied, 165 N.J. 488 (2000)).

Only after the presumption is overcome with sufficient evidence at the close of trial must the court “appraise the testimony, make a determination of true value and fix the assessment.” Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982)(citations omitted). If the court determines that sufficient evidence to overcome the presumption has not been produced, the assessment shall be affirmed and the court need not proceed to making an independent determination of value. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992); Global Terminal & Container Serv. v. City of Jersey City, 15 N.J. Tax 698, 703-704 (App. Div. 1996).

As the court concluded during trial, plaintiffs produced sufficient evidence to overcome the presumption. According all favorable inferences to plaintiffs’ evidence, as is required by law, the court concludes that plaintiffs raised a debatable question regarding the correctness of the assessment on the subject property. Plaintiffs produced five comparable sales from Downe Township during the year preceding the valuation date. Three of those sales were in the Newport section of the township, where the subject property is located. In addition, by applying reasonable adjustments to the comparable sales, plaintiffs offered evidence that was sufficiently definite, positive and certain that the assessment on the subject property exceeds its true market value as of October 1, 2008.

This determination alone does not end the court's inquiry. Having found that the presumption of correctness was overcome, it is the court's obligation to determine the true market value of the subject property on October 1, 2008 based on the evidence in the record.

The comparable sales approach is generally accepted as an appropriate method of estimating value for a residence. Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 377 (App. Div. 2001); Appraisal Institute, The Appraisal of Real Estate, 419 (12<sup>th</sup> ed 2001)(the comparable sales approach "usually provides the primary indication of market value in appraisals of properties that are not usually purchased for their income-producing characteristics."). This method of valuation has been defined as "[a] set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sales prices of the comparables based on the elements of comparison." Id. at 417. The court finds that this approach is the best method for determining the true market value of plaintiffs' residence. A purchaser in the marketplace on October 1, 2008 would determine the value of the subject property through the use of comparable sales.

The court concludes that plaintiffs offered more credible evidence of value than did defendant. Defendant's expert relied on four comparable sales from municipalities other than Downe Township. The court rejects the expert's claim that it was not possible to identify even a single comparable sale in Downe Township because of the size of the subject property. Although homes in Downe Township may generally be smaller than the subject property, defendant's expert did not credibly explain why adjustments for living size to sales from within the municipality could not adequately account for the size of plaintiffs' home. In addition, defendant's expert admitted that Lawrence Township enjoys a real estate market with more

interest and greater activity than does Downe because of greater employment opportunities in Lawrence, that Millville is a commercial hub, while Downe is rural, and that the comparable sale in Upper Deerfield Township is some 15 miles from the subject property. While the expert testified that location adjustments would account for these differences, with respect to the comparable sale in Millville he offered the opinion before the county board that the comparable sale has a superior location, but he testified before this court that the same comparable has an average location. The court finds that consideration of comparable sales from outside of Downe Township is not warranted here, given the Downe Township comparable sales in the record.

More damaging to the credibility of defendant's expert is the significant differences between the report he submitted to the county board and the report he submitted to this court. The same three comparable sales were treated differently in the two reports. In one instance no land adjustment was made at the county board, but a negative \$6,000 adjustment was made before this court. In another instance a comparable sale was reported as having 1,640 square feet of living space before the county board, but as having 3,280 square feet of living space before this court. The concomitant adjustment changed from positive \$50,000 to positive \$9,000. That same comparable was reported to the county board to have a basement with finished rooms requiring a negative \$35,000, but to this court has being built on a slab, requiring no adjustment. As noted above, the quality of the location and related adjustment for the Millville property was not the same in the report submitted to the board and the report submitted to this court.

Defendant's expert claimed that the differences in the reports were the result of oversights or reflected his changing opinion after further consideration of the comparable sales. The court finds these explanations to lack credibility, particularly in light of the fact that a third version of the expert's report, with even greater variances in adjustments, was produced during

discovery. While it may be true that an expert will recognize and correct factual errors and alter his opinion as he continues to examine comparable sales, the number of changes between the two versions of defendant's expert report submitted to adjudicative tribunals suggests at the very least a serious lack of precision on the part of defendant's expert. Rather than reflecting a thoughtful evolution of the expert's opinion, the two reports demonstrate, when viewed in the best light, a pattern of errors. The court does not have confidence that the opinion offered by defendant's expert accurately reflects the true market value of the subject property.

The court finds more credible the comparable sales offered by plaintiffs. Although Mrs. Steinhauer-Kula is not an expert appraiser, that fact alone does not undermine the reliability of the evidence she submitted. Mrs. Steinhauer-Kula, who has a background in mathematics, credibly testified that she reviewed deeds, tax records and multiple listings for numerous sales in Downe Township. She credibly testified that she eliminated sales between related parties, those for nominal consideration and those which appeared to be related to foreclosures. Defendant, which employs the tax assessor responsible for reviewing all real property transactions in this small town, introduced no evidence to suggest that any of the comparable sales identified by Mrs. Steinhauer-Kula were not the result of arm's length transactions. Mrs. Steinhauer-Kula then used for adjustments the same amounts used by defendant's expert and the company that assisted with the municipal revaluation. Again, defendant introduced no testimony challenging plaintiffs' adjustments. In short, there is no credible evidence in the record suggesting that the evidence of value introduced by plaintiffs is not reliable.

The court will discount the two comparable sales offered by plaintiffs from the Fortescue section of the township. The court accepts the testimony that Fortescue is an area of vacation homes near the banks of the Delaware River with few year round residences. The real estate

market in such an area, predominated by second homes, is subject to influences not present in Newport, a rural residential neighborhood in which the subject property is located. The court will rely on the three comparable sales offered by plaintiffs from Newport. In addition, the court will consider the subject property to be in above-average condition. The court recognizes that the older portion of the subject property is in a state of some disrepair and has negative features one would reasonably expect in a farm house that is more than 150 years old. However, the court concludes that the large new addition with two bedrooms, a family room, a den, a bathroom and central air conditioning, was in good condition on the valuation date, and would be a significant attraction to purchasers.

The court will accept as credible the adjusted sales prices on plaintiffs' adjustment grid for the three homes in Newport. Those adjusted sales prices range from \$226,120 to \$253,975. The court will place the greatest weight on comparable sale number one, which is of a farm house that was completely gutted and rebuilt in 1997. Plaintiffs acknowledged that this home, with an adjusted sales price of \$253,975, was most comparable to the subject. The court concludes that the true market value of the subject property on October 1, 2008 was \$245,000.

The Clerk of the Tax Court will enter Judgment setting the assessment on the subject property for tax year 2009 as follows: follows:

Land	\$ 36,000
Improvements	<u>\$209,000</u>
Total	\$245,000

Very truly yours,



Patrick DeAlmeida, P.J.T.C.