

TAX COURT OF NEW JERSEY

Mala Narayanan
JUDGE



153 Halsey Street
Gibraltar Building - 8TH Floor
Newark, New Jersey 07101
(973) 648-2921 Fax: (973) 648-2149

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

November 18, 2009

Lee S. Holtzman, Esq.
SCHNECK HOLTZMAN LLC
301 South Livingston Avenue, Suite 105
Livingston, New Jersey 07039

David B. Grantz, Esq.
MEYNER AND LANDIS LLP
One Gateway Center, Suite 2500
Newark, New Jersey 07102

Re: Janit London v. Township of Glen Ridge
Docket No. 007410-2008

Dear Counsel:

This letter opinion constitutes the Tax Court's decision with respect to the above-captioned complaint whereby plaintiff directly appealed the 2008 local property tax assessment of her residential property located at 289 Washington Street, Glen Ridge, designated as Lot 17, Block 40 ("Subject Property"). Defendant, Township of Glen Ridge ("Glen Ridge") implemented a district-wide revaluation for tax year 2008. Pursuant to the revaluation, Glen Ridge assessed the Subject Property for the 2008 tax year as follows:

Land	\$295,300
Improvements	<u>\$662,500</u>
TOTAL	\$957,800

*

For the reasons stated below, the court finds that the value of the Subject Property for tax year 2008 is \$870,000. Therefore, the assessment will be revised accordingly.

Proceedings

Both parties retained a professional real estate appraiser as their respective expert witness. The court accepted each party's appraiser as an expert and permitted them to testify at trial as such. Each expert prepared an appraisal report which was entered into evidence without objection. Plaintiff's expert concluded that the Subject Property's value as of October 1, 2007 was \$685,000. Glen Ridge's expert opined the same to be \$870,000. Both experts thus agreed that the Subject Property was over-assessed and a reduction was warranted. The only issue was the amount of reduction.

Also admitted in evidence without objection were (a) copies of the Multiple Listing Service ("MLS") computer print-out sheets detailing the three comparable sales used by plaintiff's expert, (b) copies of the property record card, and, (c) plaintiff's certified Answers to Glen Ridge's Standard Interrogatories.

Glen Ridge produced the testimony of its assessor, William H. Merdinger. The testimony was restricted to the explanation of the information contained in the Subject Property's property record card.¹

At the end of plaintiff's case, Glen Ridge moved for directed verdict which plaintiff opposed. The motion was denied. The court concluded that the lot sizes, ages, styles, and manner of title (i.e. fee simple) of the comparable sales used by plaintiff's expert were not aberrant or significantly different from the Subject Property. Further, the plaintiff did not *per se*

¹ Due to the limited nature of the testimony, the court overruled plaintiff's objection that the assessor could not rebut the testimony of her expert's opinion. The court also overruled plaintiff's objection that she did not know the assessor would testify because Glen Ridge had provided her counsel a list of witnesses as required by this court's Case Management Order.

fail to overcome the presumption of correctness of the assessment merely because her expert miscounted the rooms and bathrooms of the Subject Property, and used a different measurement for the gross living area.² Rather, the court determined that such errors and anomalies should be taken into consideration when evaluating the credibility of the expert's opinion. MSGW Real Estate Fund, LLC, v. Borough of Mountain Lakes, 18 N.J. Tax 364 (Tax 1998) (where court rejects an application for a directed verdict, it should render a decision by evaluating the merits and weighing proffered evidence).

Findings

I. Subject Property

The Subject Property is improved with a 2½ story colonial-style residence with an “L” shaped front porch, on a 75 x 200 feet lot containing about 15,000 square feet (or .344 acres). The Subject Property also contains a stand-alone storage shed, and an in-ground pool in the rear yard. The residence has a total of eleven rooms and three full bathrooms.³ There are three fireplaces, two of which are functional. The basement is full but unfinished. There is no garage. Both experts agreed that the Subject Property was in an “average” or “fair” condition indicative of an older home, in need of updating and cosmetic repairs, and thus, inferior to a comparable residence listed as being in a “good” condition.⁴

² Plaintiff's expert testified that the room count would not change her valuation of the Subject Property. She also testified that while her mistake in counting the bathrooms as 2½ instead of three would eliminate the \$2,500 downward adjustment in two of the three comparables, this would make only a minimal impact on her valuation of the Subject Property.

³ Although plaintiff's expert report listed the residence has having ten rooms (inclusive of four bedrooms), and 2½ bathrooms, she conceded during her testimony that this was incorrect. While the property record card indicates there are twelve rooms and four bathrooms, Glen Ridge could not substantiate these numbers.

⁴ Plaintiff's expert observed loose floorboards on the third floor, a sagging ceiling in the front porch, and evidence of some water stains/damage in the basement (although she testified that there was no water present during her

The parties disagreed on the total square footage of the gross living area. Plaintiff, in response to Glen Ridge's standard interrogatories, estimated this to be "approximately 3,603 +/- square feet." The property record card indicated 3,885 square feet. Plaintiff's expert report used 3,246 square feet. Glen Ridge's expert measured the same to be 3,885 square feet.

The court finds the gross living area as determined by the measurement of Glen Ridge's expert to be more persuasive. He personally measured the Subject Property (interior and exterior), included an heated enclosed porch area with sliding doors (toward the exterior of the house) estimated to be about 10 x 20 feet (or 200-210 square feet), and also included the area framed by a bay window (on the westerly side of the residence by the driveway) since it comprised a portion of the gross living area. In contrast, plaintiff's expert failed to include these areas. She conceded in her testimony that the enclosed porch area if heated was properly includible but provided no reason for excluding the bay window portion. Accordingly, the court finds that the Subject Property's gross living area was 3,885 square feet.

II. Comparable Sales

Both experts concluded that the Sales Comparison approach as the most appropriate method of valuation for the Subject Property. Plaintiff's expert used three sales, while Glen Ridge's expert used four. There were no sales common to both experts' analyses. They both relied upon information provided in the MLS to identify comparable properties they used in valuing the Subject Property. They also visually examined and photographed the exteriors of the comparable properties, and included the same in their respective reports.

inspection, and her report stated that no "dampness" was "noted" in the "foundation"). Glen Ridge's expert asserted that he witnessed no such conditions during his inspection of the Subject Property.

Plaintiff's made adjustments for location,⁵ condition, bathrooms, gross living area and for other factors such as basement condition, garage, and amenities (e.g. fireplaces, central air, pool). She arrived at net adjusted sales prices ranging from a low of \$582,500 to a high of \$741,000 (Sale One on 06/14/07 was for \$781,000; Sale Two on 11/01/06 was for \$635,000; and Sale Three on 10/05/07 was for \$610,000). From this, she concluded the value of the Subject Property as of October 1, 2007 to be \$685,000.

Glen Ridge's expert computed the net adjusted sales prices ranging from a low of \$844,900 to a high of \$884,900 (Sale One, the property next door, sold 07/18/07 for \$925,000; Sale Two sold on 12/31/07 for \$940,000; Sale Three sold on 06/19/07 for \$993,000; and Sale Four sold on 12/19/06 for \$980,000). He eliminated the extremes (high and low) and arrived at a mid-range of \$870,000 as reflecting the value of the Subject Property.

The court finds the sales utilized by Glen Ridge's expert are more probative of the Subject Property's value. His comparable Sale One was located next door to the Subject Property (295 Washington Street). He testified that proximity to the Subject Property is a significantly important factor, since there was considerable difference in sale prices for residences *south* of the Subject Property than properties *north* of the Subject Property. His report noted that the four comparables he chose were in close proximity to the Subject Property. He concluded that the net adjusted price of the next-door property (Sale One) is the best indicator of value, since that property is comparable in many significant respects with the Subject Property.

⁵ The expert concluded that comparable Sales One and Three are in an "Average/Good" location as opposed to the Subject Property's location which she determined to be "Average/Busy."

Glen Ridge's expert also made adequate time (i.e., market conditions) adjustments for three of the four comparable sales due to the difference between their date of sale and the valuation date (October 1, 2007).⁶ The court finds these adjustments credibly explained. Generally, a year-old sale or a six-month old sale warrants a suitable adjustment for market conditions to render such sale a valid or adequate comparable. Appraisal Institute, The Appraisal of Real Estate 333 (13th ed. 2008) (adjustments justified if property values have changed since transaction dates); Property and Appraisal Guidelines, Fannie Mae Single Family Selling Guide, Part IX, §406.03 (June 30, 2002) (appraiser must make appropriate adjustments for, among others, date of sale, to reflect the time lapse between date of sale of the comparable property and the valuation date).

Additionally, the court finds that the sales utilized by Glen Ridge's expert are more comparable to the Subject Property (similar in size to the Subject Property's gross living area), and therefore are more probative of its value. See e.g., Elrabie v. Borough of Franklin Lakes, 24 N.J. Tax 158, 177 (Tax 2008) (agreeing with the township's expert that "comparison of houses of similar size, with adjustments for the quality and amount of amenities, produces a more accurate measure of value than does a comparison of homes of differing size with similar amenities").

In contrast, plaintiff's expert did not consider nor provide any explanation for rejecting the sale of the property next door to the Subject Property as a valid comparable although she conceded in her testimony that she would normally consider such a sale usable under the Sales Comparison approach. Furthermore, she made no market conditions adjustments for any of her

⁶ Sale Two had no adjustment since the sale contract was executed October 11, 2007 (although it closed December 31, 2007). Glen Ridge's expert made a downward adjustment for his comparable Sale Four which sold December 2006. His report substantiated the adjustments (10% annually) as being reflective of the 2006-2007 declining market conditions even though the contract purchase prices increased by about 5%.

sales, including Sale Two which was sold almost a year prior to the October 1, 2007 valuation date. Her reasoning for this (according to her testimony) is that any adjustments for the time factor may have been too “low” rendering the sale an “unfair” comparable. However, the court finds that the lack of time adjustments (for Sales One and Two) renders the sales used by plaintiff’s expert less reliable as comparables and of limited guidance in determining the value of the Subject Property.

Plaintiff’s expert did not explain how she would make appropriate adjustments to the comparables using 3,885 square feet as the gross living area of the Subject Property. She did not testify whether she would have chosen larger sized homes so they would be closer in comparison to the Subject Property. Rather, she simply testified that if 200-210 feet of the heated porch (which she omitted) had been included in the living area, the valuation of the Subject Property (at \$211 per square feet⁷) would increase to about \$727,000.

Glen Ridge’s expert disagreed. He noted that changes in the gross living area square footage merited appropriate adjustments or re-calculations, not just to the Subject Property, but to the comparables and the entire comparison grid as part of the Sales Comparison approach. Accordingly, the adjusted value of each of the comparable sales could well be different.

The court finds the testimony of Glen Ridge’s in this regard to be more credible. The difference in the gross living area is not simply accounted for by adding the difference to the Subject Property and increasing its value. Rather, it goes to the weight given to the comparables, which in turn, impacts the weight afforded the value of the Subject Property determined by the expert. The court finds that the Plaintiff’s expert did not provide a meaningful or succinct

⁷ Value of the Subject Property of \$685,000 (as determined by the expert) divided by 3,246 square feet of gross living area equals \$211 per square foot.

explanation of how she would account for the difference in square footage *vis-à-vis* the weight that should be afforded to the comparables.

The court finds the value of plaintiff's residence on October 1, 2007 was \$870,000. The opinion of Glen Ridge's expert in this regard is factually sound, follows appraisal standards for adjustments and is adequately explained with supporting market data. His testimony was more persuasive and his comparable sales more proximate, and similar in size and characteristics to the Subject Property.⁸ See Ford Motor Co. v. Edison Tp., 127 N.J. 290, 307 (1992) (comparable sales must be "sufficient[ly] similar[] in some significant respects to permit ... the fact-finder, to draw rational probative valuation inferences from the sales cited.").

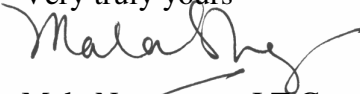
Conclusion

The court finds that the true value of the Subject Property as of the October 1, 2007, is \$870,000. This conclusion of value reflects an amount which is less than the total assessment of \$957,800. Since tax year 2008 was a revaluation year, Chapter 123 is inapplicable. N.J.S.A. 54:51A-6(d). In a revaluation year, all property is presumed to be uniformly assessed at true value. Tri-Terminal Corp. v. Edgewater, 68 N.J. 405 (1975). Therefore, the assessment of the Subject Property shall be set at \$870,000 (being 100% of the court's determined true value) to be allocated as follows:

Land	\$295,300
Improvements	<u>\$574,700</u>
TOTAL	\$870,000

⁸ Glen Ridge's expert did not make adjustments for the number of fireplaces due to lack of support for such practice on the market. The court finds this to be reasonable. Even if fireplaces are attractive amenities (see, The Appraisal of Real Estate supra, at p.263, which notes that many amenities are now considered necessities, with an increasing tendency for houses to retain fireplaces), an upward adjustment of \$5,000 (the number used by the plaintiff's expert) to the four comparables does not produce a significantly different result to the Glen Ridge's expert's valuation.

The Tax Court Clerk/Administrator is directed to enter judgment in accordance with this letter opinion.

Very truly yours

Mala Narayanan, J.T.C.