NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS

PLAZA TWENTY THREE STATION, LLC,	:	TAX COURT OF NEW JERSEY
	:	DOCKET NOs.: 002870-2018
	:	002215-2019
Plaintiff,	:	000062-2019[1]
	:	
v.	:	Approved for Publication In the New Jersey Tax Court Reports
	:	
TOWNSHIP OF PEQUANNOCK,	:	
	:	
Defendant.	:	
	:	

Decided: January 9, 2020 Published Opinion: January 22, 2020

Daniel P. Zazzali and Michael D. Benak for plaintiff (McCarter & English, LLP, attorneys).

Robert H. Oostdyk, Jr. for defendant (Murphy McKeon, PC, attorneys).

BIANCO, J.T.C.

This opinion following trial shall serve as the court's determination concerning the challenge by plaintiff, Plaza Twenty Three Station, LLC ("Plaza Twenty Three"), to the 2018 and 2019 local property tax assessments of its commercial building located within the defendant municipality, Township of Pequannock ("the Township"), at 500 Route 23, Pequannock, New

[1] Although the parties agreed to consolidate tax years 2018 and 2019 for final disposition by trial, they omitted Docket No. 000062-2019 from their Consent Consolidation Order submitted to this court for entry. In that complaint, Plaza Twenty Three challenged the added assessment of $300,000 for tax year 2018. This added assessment, however, was a component of the 2019 assessment, was testified to by the Municipal Assessor during trial, and was discussed in each party's post-trial brief. Accordingly, the court addressed the matter in its January 9, 2020 letter opinion. Inclusion of the docket number is therefore the correction of a clerical error and does not involve any change to the court's decision in this regard. The court's letter opinion dated January 9, 2020 is here converted into a publication format with minor edits, new footnotes and reformatting.

Jersey, designated by the taxing district as Block 2007, Lot 1 ("Subject Property"). For the reasons set forth herein, the court finds the 2018 assessment to be an unconstitutional spot assessment based upon the 2017 sale of the Subject Property. Furthermore, the 2019 assessment is set aside for being based substantially on the improper 2018 assessment, the previously invalidated 2017 added assessment, and an improper 2018 added assessment of $300,000 in improvements allegedly resulting in a corresponding increase in the Subject Property's operating income. Accordingly, the 2018 and 2019 assessments are reduced to $24,446,100, the assessment amount prior to Plaza Twenty Three's purchase.

Procedural History

In February 2017, Plaza Twenty Three purchased the Subject Property for $51,050,000. At that time, the assessed value of the Subject Property was $24,446,100. In the same year, the Municipal Assessor imposed a twelve-month added assessment on the Subject Property for the 2017 tax year in the amount of $20,500,000. The Municipal Assessor claimed that he imposed the added assessment based on the (1) flood proofing completed at the Subject Property in May 2014, (2) work completed at tenant, Jersey Mike's on April 26, 2016, (3) work completed at tenant, PNC Bank on May 1, 2014, (4) work completed at tenant, Vision Works in January 2017, and (5) work completed at tenant, Smash Burger in May 2017. Furthermore, the Municipal Assessor admitted during deposition testimony that he took consideration of February 2017 leased fee sale into his decision for the added assessment.

On November 16, 2017, Plaza Twenty Three appealed the 2017 added assessment directly to the Tax Court, which was followed by a direct appeal of the 2018 assessment on March 15,

2018.[2] On December 10, 2018, Plaza Twenty Three filed a motion for summary judgment for tax years 2017 and 2018. The Township timely filed opposing papers.

On February 15, 2019, the court heard oral argument from both parties and granted Plaza Twenty Three's motion for summary judgment for tax year 2017. In a bench opinion,[3] the court concluded that the Township's 2017 added assessment was prohibited by law, and therefore, it should be vacated. The court, however, declined to invalidate the 2018 assessment because it was entitled to a presumption of validity, and found an issue of material fact existed as to whether the Municipal Assessor relied solely upon the 2017 added assessment when setting the 2018 assessment.[4]

On March 08, 2019, Plaza Twenty Three appealed the 2019 local property tax assessment directly to the Tax Court. On June 5, 2019, the court consolidated the 2018 and 2019 appeals

[2] The 2018 $300,000 added assessment was appealed first to the Morris County Board of Taxation resulting in a judgment code 6A "i.e. Dismissal without Prejudice . . . Tax Court pending." That matter was timely appealed to the Tax Court on January 9, 2019.

[3] The bench opinion was amplified on March 25, 2019 in a letter to the Appellate Division issued pursuant to R. 2:5-6(c) in Plaza Twenty Three Station, LLC v. Township of Pequannock, 2019 N.J. Tax Unpub. Lexis 11 (Tax 2019). The Appellate Division under Docket No. A-002936-18 affirmed in an unpublished opinion.

[4] Given that the 2017 added assessment was found to be invalid, Plaza Twenty Three urged the court to also invalidate the 2018 original assessment. The court declined to do so noting that there were different standards of review when evaluating the legitimacy of an added assessment and the validity of an original assessment. Plaza Twenty Three provided no basis in the law for the court to roll back the Subject Property's original 2018 assessment to its 2016 assessment simply because the 2017 added assessment was deemed invalid. The court noted that the 2018 original assessment, regardless of how derived, was still entitled to a presumption of validity. See Atlantic City v. Ace Gaming, 23 N.J. Tax 70, 98 (Tax 2006) (finding that the "presumption of validity stands even though the court is unable to precisely ascertain how the Tax Assessor, . . . arrived at the assessment of the Subject Property"). The facts were not clear to the court *at that time*, that the Municipal Assessor relied solely on the 2017 added assessment in setting the 2018 original assessment. In the court's view, that was clearly a material fact in dispute. Accordingly, Plaza Twenty Three's motion with regard to the 2018 tax year was denied.

because they presented common issues of law and facts. Trial in both matters was held on July 8-9 and 16 of 2019.

Facts

On July 8-9, the court heard testimony from expert appraisers for Plaza Twenty Three and the Township concerning the valuation of the Subject Property. At the close of evidence, the court, still mindful of Plaza Twenty Three's earlier claim of spot assessment for the 2018 and 2019 tax assessments, found it necessary to hear the testimony of the Municipal Assessor directly as to how he arrived at the assessments for the Subject Property for the years at issue.[5] The court gave the parties ample time to prepare for the Municipal Assessor's direct testimony and cross-examination. On July 16, the Municipal Assessor[6] testified that he was prompted to review the Subject Property's assessment in 2018 after it was sold in 2017 for $51,050,000. At the time of sale, the Subject Property was assessed at $24,446,100. In 2018, the Municipal Assessor reassessed the Subject Property at $44,946,100, a $20,500,000 increase from the previous year. In 2019, he reassessed the Subject Property at $45,246,100, a $300,000 increase from the year before.

According to the Municipal Assessor, he first spoke with the attorney for the sellers and confirmed that it was an arms-length transaction. Then, he developed an income approach analysis to assess the Subject Property, using rates which he believed were appropriate. He created these rates without performing any market research or using comparable rents. The Municipal Assessor made a value determination of $27-$28 per square foot for the entire Subject Property, based on the Stop & Shop anchor tenant lease and rent rolls collected through prior appeals. He then

[5] The court exercised this authority pursuant to N.J.R.E. 614 which states that "[t]he judge, in accordance with law and subject to the right of a party to make timely objection, may call a witness and may interrogate any witness."

[6] The Township's Municipal Assessor has held that position for eighteen years.

calculated a vacancy rate of 6% based on information from the owner's website and a drive-by inspection of the property. He used a 4% management rate, a 4% commission's rate, and a 2% reserve rate based on his experience with other property tax appeals and conversations with other appraisers. Finally, he used a 7.5% capitalization rate which he admitted "might have been a little too high." The Municipal Assessor did not provide evidence of his calculations but testified that he arrived at a number of about "$49 million in change" which "seemed to pretty closely fit with the sale price."

For the 2019 assessment, he carried over the 2018 assessment and added an additional $300,000 because of tenant improvements made by Plaza Twenty Three for a new Verizon tenant.

On cross-examination, the Municipal Assessor reaffirmed that he never valued the Subject Property before it sold in 2017, instead choosing to roll over the 2012 assessment to subsequent years. He also confirmed that he would not have changed the 2018 assessment were it not for the 2017 added assessment which was based on flood mitigation and tenant improvements made several years prior. While he was aware of these improvements when they were made, he did not use them as a basis for reassessing the Subject Property until after the property was sold in 2017. Finally, the Municipal Assessor confirmed a statement that he made during his deposition where he said that he used "reverse engineering" when he performed the income approach analysis, and that his final calculation "fit" the sale price number.

Applicable Law

Municipal tax assessors have the duty to "after examination and inquiry, determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October 1 next preceding the date on which the assessor shall complete his assessments, as hereinafter required."

N.J.S.A. 54:4-23. This duty, however, does not grant the assessor unbridled discretion. The Uniformity Clause of the New Jersey Constitution requires that "[a]ll real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value . . . ." N.J. Const. art. VIII, § 1, ¶ 1(a). Furthermore, "[d]iscrimination under the Equal Protection clause occurs when a property is intentionally assessed at a higher percentage of true value than similarly-situated properties, and this 'in fact bears unequally on persons or property of the same class.'" Township of West Milford v. Van Decker, 120 N.J. 354, 363 (1990) (quoting Allegheny Pittsburgh Coal Co. v. County Comm'n, 488 U.S. 336, 343 (1989)). The New Jersey Supreme Court has held that the practice of singling out certain properties for reassessment while maintaining the assessments of other similarly-situated properties violates both the New Jersey Constitution and the Fourteenth Amendment of the United States Constitution as an unconstitutional spot assessment. Van Decker, 120 N.J. at 363.

In all property tax appeals, there is a presumption of correctness attached to the assessment. Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985). The taxpayer has the burden of proving, through cogent evidence, that an assessment was erroneous. Ibid. If a taxpayer can provide sufficient evidence of spot assessment discrimination, the Township must show that a reassessment was not based solely on the sale of a property by demonstrating "legitimate non-sales related justifications." Centorino v. Township of Tewksbury, 347 N.J. Super. 256, 266 (App. Div. 2001). Examples of such justifications include "increased property value based on new improvements", Van Decker, 120 N.J. at 362, and other "specific situations and objective criteria relating to the constitutional underpinnings of required uniformity in assessments." Centorino, 347 N.J. Super. at 266. Ultimately, "under no circumstances can appraised valuation of property be increased

merely because it has been sold." Van Decker, 120 N.J. at 362 (emphasis added). The remedy for a spot assessment is to revert the assessment back to its pre-sale amount. Id. at 365.

In Centorino, the Appellate Division found that an assessor performed an unconstitutional spot assessment when reassessing the subject property. Centorino, 347 N.J. Super. at 267. There, the Township reassessed plaintiff's property after the property had been recently sold to plaintiff. Id. at 260. Even though the sale drew the property to the assessor's attention, the Township argued that the reassessment was independent of the sale and served to correct a previous mischaracterization of the subject property. Id. at 266. The court rejected this argument as self-serving, first noting that "[i]f we accepted such a contention, Van Decker could be relegated to a premature grave merely because a tax assessor came up with an excuse to 'correct' a claimed subjective mistake." Id. at 262. The court further found that the assessor's explanation of the differences in property characterizations was "so obviously subjective and discretionary, and not readily discernable . . . ", determined by a "'drive-by inspection'" that was triggered by the property's sale. Id. at 264-65. The court held that the Township committed a "clear example of spot assessment discrimination" and ordered for the assessment to be returned to the pre-sale amount. Id. at 267.

In Mountain View Crossing Investors LLC, the Tax Court held that the Township did not unconstitutionally spot assess the subject property despite being motivated to reassess it because of its prior sale. Mountain View Crossing Investors LLC v. Township of Wayne, 20 N.J. Tax 612, 613 (Tax 2003), aff'd, 21 N.J. Tax 481 (App. Div. 2004). There, the subject property was an apartment complex that sold to plaintiff in 1998. Id. at 614. Despite having reassessed several other apartment complexes in the Township, the municipal assessor did not reassess the subject property because it was unique and she was unable to perform an income approach analysis with

the information available to her. Id. at 615. Instead, she filed appeals on the subject property in 1999 and 2000, primarily to obtain income information through discovery. Id. at 614. In 2000, the assessor obtained a rent roll and income and expense information from plaintiff during a settlement conference and used this new information to perform an income analysis of the subject property. Id. at 616. She then reassessed the property for the 2001 and 2002 tax years based on this new information. Ibid. The plaintiff argued that these assessments were unconstitutional spot assessments because the assessor had not reassessed the property since 1993 and was motivated to reassess it solely because of the 1998 sale. Id. at 617. The court rejected this argument and held that the assessor had a sufficient basis, independent of the sale, for reassessing the subject property after receiving accurate income and expense information through discovery related to the 1999 and 2000 appeals. Id. at 623.

Analysis

Here, the court finds that the Municipal Assessor conducted an unconstitutional spot assessment by relying solely on the Subject Property's sale in 2017 when making the 2017 added assessment. The Municipal Assessor admitted in his deposition and in court that he did not value nor inspect the Subject Property until being motivated to do so by the 2017 sale, despite being aware of previous improvements made to the Subject Property. He also did not reassess the Subject Property as part of a municipal-wide revaluation of similar properties. With evidence presented to the court that the Subject Property was spot assessed, the Township bore the burden to demonstrate "legitimate non-sales related justifications" for the 2017 added assessment. Centorino, 347 N.J. Super. at 264-65.

The Township has failed to meet its burden. Not only did the Municipal Assessor fail to record any of his calculations, but the rates that he posited were entirely subjective and derived

solely from a cursory inspection of the Subject Property without any market comparisons. This falls short of the action that even the assessor in Centorino took to calculate a reassessment. Id. at 264 (where the assessor considered the sale of comparable properties in his assessment analysis). The Municipal Assessor cited the flood mitigation improvements and the addition of the Stop & Shop tenant, however, the flood work was performed in 2014 and the Stop & Shop signed its lease in 2013. The fact that these improvements were ignored until the Subject Property sold in 2017 further calls into question the Municipal Assessor's testimony that the property was not reassessed solely because of its sale. The court finds that the Municipal Assessor's testimony concerning his income approach analysis amounted to a *post hoc* rationalization of an assessment that was based solely upon the Subject Property's sale. To accept his testimony as proof that the property was not spot assessed would, as the Centorino court warned, relegate the Van Decker holding "to a premature grave." Centorino, 347 N.J. Super. at 262.

Finally, the court finds that this case is sufficiently distinguishable from Mountain View Crossing Investors LLC. The assessor in that case was prompted to reassess the subject property after its sale, but did not do so immediately. Mountain View Crossing Investors LLC, 20 N.J. Tax at 615-16. Rather, she waited two years until she could collect enough rent rolls and income and expense information from the new owner before revising the assessment. Ibid. By doing so, she was able to establish an independent justification for her revised assessment.[7] Id. at 623. Here, the Municipal Assessor noticed that the property was sold, reassessed it to a number remarkably

[7] The court in Mountain View Crossing Investors LLC also considered that the assessor reassessed several other apartment complexes around the same time, which further negated the spot assessment argument raised by plaintiff. 20 N.J. Tax at 616, 622. In the instant case, the Township has not presented evidence of a municipal-wide revaluation of shopping centers. While a property may be individually reassessed for improvements without a municipal-wide revaluation, an assessor may not do so "merely because [the property] has been sold." Van Decker, 120 N.J. at 362-63.

close to the sale price, and mentally created a "reverse-engineered" calculation to justify doing so. The rates that he used were highly subjective and admittedly not derived from market comparisons. His actions more closely resemble those of the assessor in Centorino, who argued that his reassessment of the subject property was based on a property class mischaracterization but supported his argument with subjective evidence which the court found to be self-serving. Centorino, 347 N.J. Super. at 265. The Municipal Assessor here has similarly failed to persuade the court that the reassessment was based on anything but the Subject Property's sale.

In short, the Municipal Assessor was prompted to reassess the Subject Property after learning of its sale in 2017. With such a subjective explanation for why the Subject Property was reassessed, the Municipal Assessor was required to "establish additional objective proofs" that the property was not spot assessed. Ibid. Those proofs cannot be found here. The Municipal Assessor's failure to provide persuasive, objective evidence of his income approach leads the court to conclude that the Subject Property was reassessed solely because of its sale.

When asked about his basis for the 2018 assessment, the Municipal Assessor stated that the 2018 assessment was based on the 2017 added assessment, and that without it he would have continued to roll over the prior year's assessment. Because the 2018 assessment was based on the previously invalidated 2017 added assessment and its underlying income approach analysis, the 2018 assessment must also be set aside because it simply carried over an unconstitutional spot assessment.

The 2019 assessment was based on the 2018 assessment, and an added assessment of $300,000 to account for improvements made by Plaza Twenty Three to a previously vacant McDonalds for a new Verizon tenant which moved into the Subject Property in or about August 2018. To the extent that the 2019 assessment was based on the 2018 assessment, the 2019

assessment must also be invalidated for carrying over an unconstitutional spot assessment from a prior year.

As for the $300,000 added assessment, the Township provided no evidence to support how the $300,000 in improvements resulted in a corresponding increase in the Subject Property's operating income. Under the income analysis approach (which the parties stipulated to as the best approach for the Subject Property) this analysis was required. See Appraisal Institute, The Appraisal of Real Estate 474 (14th ed. 2013) (discussion of tenant improvements); see also, Harclay House v. East Orange City, 18 N.J. Tax 564, 569 (Tax 2000) (requiring appraisers to calculate gross income when applying the income method), aff'd, 344 N.J. Super. 296 (App. Div. 2001). Accordingly, the 2019 assessment is invalidated in its entirety.

Conclusion

The Township has failed to provide persuasive evidence of a "legitimate non-sales related justification" for the increase in the 2018 assessment of the Subject Property. Accordingly, the court concludes that the 2018 assessment constitutes an unconstitutional spot assessment based solely on the previously invalidated 2017 added assessment and must therefore be set aside. Finally, the 2019 assessment was based on the improper 2018 assessment, along with a $300,000 added assessment based on tenant improvements. This $300,000 added assessment, however, was arbitrarily derived with no analysis as to how the tenant improvements affected the gross income of the Subject Property. Therefore, the 2019 assessment is also invalidated in its entirety. The court reverts the 2018 and 2019 assessments back to the pre-sale amount of $24,446,100. Given this conclusion, it is of no consequence for the court to address the value proofs presented by the parties at trial. The Tax Court Clerk/Administrator is directed to issue judgments consistent with this opinion.