

VERNON W. HILL,)	TAX COURT OF NEW JERSEY
SHIRLEY HILL,)	DOCKET NO. 009783-2008
)	
Plaintiffs,)	Civil Action
)	
v.)	ORDER ON REMAND
)	
TOWNSHIP OF MOORESTOWN,)	
)	
Defendant.)	
)	

This matter having been remanded by the Superior Court, Appellate Division, for disposition of plaintiffs' motion, pursuant to Rule 1:38-11, to seal the record in the Superior Court, Appellate Division matter entitled Vernon W. Hill and Shirley Hill v. Township of Moorestown, Docket No. A-000709-13, and plaintiffs having subsequently narrowed the scope of their motion to seek an order sealing only portions of the record in that matter, and the court having determined that a hearing is not necessary to dispose of plaintiffs' motion, and based on the court's findings of fact and conclusions of law set forth in the attached statement of reasons,

It is on this 6th day of January, 2020, ORDERED as follows:

(1) Plaintiffs' motion is GRANTED, in part, as follows: the following items in the record in the Superior Court, Appellate Division matter entitled Vernon W. Hill and Shirley Hill v. Township of Moorestown, Docket No. A-000709-13, are sealed pursuant to Rule 1:38-11, only to the extent described:

PA 67. Prior to disclosure, the email addresses in the "cc" line of the document shall be redacted as confidential information inadvertently submitted to the court;

PA 69. Prior to disclosure, the email addresses in the "cc" line of the document shall be redacted as confidential information inadvertently submitted to the court;

PA 210. Prior to disclosure, the entire sentence beginning on the fourth line of the first paragraph of PA 210 with "A portion . . ." shall be redacted as confidential information inadvertently submitted to the court; and

(2) Plaintiffs' motion pursuant to Rule 1:38-11 to seal the remainder of the record in the Superior Court, Appellate Division matter entitled Vernon W. Hill and Shirley Hill v. Township of Moorestown, Docket No. A-000709-13, is DENIED; and

(3) This order will take effect thirty (30) day from the date of its entry to permit the parties to seek review in the Appellate Division.

s/ Hon. Patrick DeAlmeida, J.T.C. (t/a)

Vernon W. Hill v. Township of Moorestown
Docket No. 009783-2008

Statement of Reasons

Plaintiffs' Motion to Seal Portions of
the Appellate Record Pursuant to Rule 1:38-11

I.

Procedural History and Findings of Fact.

Plaintiffs Vernon W. Hill and Shirley Hill own real property in defendant Moorestown Township. On the property is what plaintiffs describe as the largest single-family home in Southern New Jersey, consisting of 29,236 square feet of living space and an additional 55,543 square feet of improvements on a 7.21-acre portion of a 44-acre parcel. For tax year 2008, the property was assessed by the municipality at a true market value of \$20,814,500.

Plaintiffs filed a complaint in this court challenging the tax year 2008 assessment. At the request of the parties, the court entered a consent protective order in which the parties agreed to maintain the confidentiality of documents and information exchanged during discovery. The consent protective order did not provide that documents and information filed with the court would be sealed from public disclosure pursuant to Rule 1:38-11.

Shortly after the conclusion of trial, plaintiffs submitted an informal request, along with a proposed consent order, to seal the trial record. This court denied plaintiffs' request without prejudice to plaintiffs' moving to seal the trial record based on evidence sufficient to satisfy Rule 1:38-11. Plaintiffs did not thereafter move before this court to seal the record pursuant to Rule 1:38-11. This court issued a written opinion and final judgment affirming the assessment.

Plaintiffs filed an appeal of this court's final judgment in the Superior Court, Appellate Division. The matter was entitled Vernon W. Hill and Shirley Hill v. Township of Moorestown and assigned Docket No. A-000709-13 (the Hill Appeal).

In an unpublished opinion, the Appellate Division affirmed this court's final judgment. The Appellate Division opinion was marked "Record Impounded."

Shortly after issuance of the Appellate Division's opinion, Larry S. Loigman, Esq., submitted a public records request to the Clerk of the Appellate Division seeking production of the “motion, order, and all other documents on file showing why the case was marked ‘record impounded’” as well as a list of “all documents which have been impounded and are not available for public access.”

The Appellate Division Clerk denied Loigman's request, stating, in relevant part,

Please be advised that this case was sealed at the Tax Court via a CONSENT PROTECTIVE ORDER. Because of this order the case has also been sealed at the Appellate level. In order to view documents or receive further information about the case it will be necessary to file a MOTION asking the court[']s permission [to] get further information and/or to view the Appellate record.

Pursuant to Rule 1:38-10(b), Loigman appealed the denial of his request to the Hon. Glenn A. Grant, J.A.D., Acting Director of the Administrative Office of the Court. Judge Grant acknowledged the Appellate Division had sealed the Hill Appeal record based on the consent protective order entered by this court. Judge Grant also noted, however, this court denied plaintiffs' post-trial motion pursuant to Rule 1:38-11 to seal the trial court record, a fact not mentioned in the Case Information Statement, briefs, or appendix in the Hill Appeal. As a result, the Appellate Division Clerk and the parties proceeded as if the record in the Hill Appeal had been sealed, even though it had not been sealed. In light of these circumstances, Judge Grant afforded the parties

leave to move before the Appellate Division to seal all or portions of the record in the Hill Appeal, upon a showing of just cause required by Rule 1:38-11.

Plaintiffs thereafter moved in the Appellate Division pursuant to Rule 1:38-11 to seal the record in the Hill Appeal. Loigman subsequently moved to intervene in the Hill Appeal "to vindicate the public right of access to court records." The Appellate Division granted Loigman's motion to intervene and remanded the matter for disposition of plaintiffs' motion to seal the record in the Hill Appeal.

After a telephone conference with the court, plaintiffs narrowed the scope of their motion to seal the record in the Hill Appeal. Plaintiffs no longer request that the entire record be sealed. They instead request that only the following portions of items in the Hill Appeal record be sealed:

PA 67. All indications of email addresses to be redacted.

PA 69. All indications of email addresses to be redacted.

PA 185 – PA 186. Pictures within Taxpayer[s'] Appraisal to be removed.

PA 205 – PA 207. Floor Plans within Taxpayer[s'] Appraisal to be removed.

PA 208 – PA 211. Subject Property in-depth descriptions within Taxpayer[s'] Appraisal to be removed.

PA 257. Discussion of Value having in-depth subject descriptions within Taxpayer[s'] Appraisal to be removed.

PA 263 – PA 302. Addendum to Taxpayer[s'] Appraisal to be removed.

PA 327. Cover of Township's Appraisal to be removed.

PA 335 – PA 337. Site Description and maps to be removed.

PA 341 – PA 415. Subject Property description and subject photographs within Township's Appraisal to be removed.

PA 435 – PA 440. Improvement Cost Estimate within Township's Appraisal to be removed.

PA 452 – PA 453. Adjustment Grid within Township’s Appraisal to be removed.

PA 455 – PA 460. Pages including subject descriptions, improvements and analysis to be removed.

DR 2 – DR 3. Pages within Defendant/Respondent’s brief including in-depth subject descriptions to be removed.

DR 14 – DR 15. Pages within Defendant/Respondent’s brief including in-depth subject descriptions to be removed.

II.

Conclusions of Law

Public access to court records is firmly established and intended to be broad. According to Rule 1:38-1,

Court records . . . as defined by R. 1:38-2 . . . and within the custody and control of the judiciary are open for public inspection and copying except as otherwise provided in this rule. Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary.

Rule 1:38-2 defines court records to include

(1) any information maintained by a court in any form in connection with a case or judicial proceeding, including but not limited to pleadings, motions, briefs and their respective attachments, evidentiary exhibits, indices, calendars, [and] dockets

Rule 1:38-3 establishes several exceptions from public access to court records, including one relevant here:

The following court records are excluded from public access:

(f)(4) Records that are impounded, sealed pursuant to R. 1:38-11, or subject to a protective order pursuant to R. 4:10-3

Rule 1:38-11 allows for court records to be sealed under limited circumstances. The rule provides as follows:

(a) Information in a court record may be sealed by court order for good cause as defined in paragraph (b) The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.

(b) Good cause to seal a record . . . shall exist when:

(1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and

(2) The person's or entity's interest in privacy substantially outweighs the presumption that all court . . . records are open for public inspection pursuant to R. 1:38.

Rules 1:38-1 to -13 were adopted by the Supreme Court after its receipt of the recommendations in the Report of the Supreme Court Special Committee on Public Access to Court Records issued on November 29, 2007. Notably, the Special Committee considered recommending exempting from public access various categories of court records containing personal information:

[t]he Committee grappled with the issue of whether the public should have access to personal information once it is filed with or submitted to the court and becomes part of the court record – whether paper or electronic. Specifically, the Committee focused on the problems associated with hyper-dissemination of court records on the Internet. The reality is that personal information . . . once hidden in a dusty courthouse file or drawer ("practical obscurity") may be available to a worldwide audience if placed on the Internet.

Ultimately, the Committee concluded that personal information placed before the court for its consideration in rendering a decision must be made available for public inspection. The core principle supporting open court records is transparency – allowing the public to observe the working of the judicial process. Only by having access to the full record before the court can citizens fairly evaluate the effectiveness of their judicial system, and the fairness of the court's decisions in a particular case. Although the potential for technology to erode the personal privacy of litigants is indisputable, the Committee felt strongly that public trust and confidence in the integrity of the judicial process outweighs the privacy concerns of individual litigants in most cases.

This conclusion was not reached lightly, and was the subject of substantial debate. Many, if not most, litigants are unaware that by bringing their disputes to the court for resolution, they are opening the details of their disputes to public inspection.

The Special Committee "discussed in detail many types of records that raise questions about the balance between personal privacy and the public's right to access court records." Among the records considered for exemption from public access were "[r]eports in [t]ax [a]ppeals" when those reports have been used by the court to facilitate settlement but not admitted into evidence. The Special Committee explained that

[t]ax appeals involve determining whether a public taxing authority has acted fairly. When a property owner appeals a tax assessment to the Tax Court, Rule 8:6-1 requires the parties to exchange copies of appraisals or other expert reports on which they may rely if the matter goes to trial. The Tax Court often requires that these reports also be submitted to the judge.¹ In the case of commercial properties, the reports ordinarily include income and expense information that the property owners regard as proprietary. Usually the court does not review the appraisals or expert reports until shortly before trial, and in some cases may use the reports to facilitate settlement.

The Committee considered the argument that such private business information should not be subject to public access unless the information is admitted into evidence or otherwise considered by the judge in making a decision. A judge's use of these reports to suggest settlement parameters is not the same as relying on the report to render a decision in the case.

Despite these considerations the Committee concluded that exempting expert reports from disclosure would be inconsistent with the principle of openness that guided the Committee. Even when these expert reports are not introduced at trial, they may nevertheless be used by the court to determine the parameters of a potential resolution. The public has a legitimate interest in assuring the fairness of the process by which property taxes are levied. The public trust in the process is advanced when documents directly

¹ The extent to which this court requires pretrial submission of appraisal reports has changed in the years since issuance of the Special Committee's report.

affecting the disposition of a challenge to that process are available to the public.

The Special Committee's rejection of an exemption for appraisal reports submitted to this court highlights two salient points. First, the public interest in judicial resolution of local property tax appeals outweighs the privacy interests of the taxpayer to information in an appraisal report submitted to this court, at least in the context of proprietary business information. Second, public disclosure of appraisal reports submitted to this court is favored whenever the court uses the reports to facilitate resolution of the appeal, even when the reports are not admitted into evidence. This is significant because it is apparent to this court that the Special Committee's discussion of appraisal reports was premised on the assumption the reports would be subject to public disclosure if admitted into evidence at trial.²

It is against this backdrop that the court decides plaintiffs' motion. In support of their request to seal portions of the record, plaintiffs argue two constitutional rights are in tension in this matter. Plaintiffs argue they have a constitutional right to privacy that includes the right to exclude the public from viewing their home and its contents and to prevent public disclosure of the details of their premises. See United Property Owners Ass'n v. Borough of Belmar, 343 N.J. Super. 1, 34 (App. Div. 2001). Second, it is well established plaintiffs, like all property owners, have a constitutional right to equality in treatment in local property taxation. See N.J. Const. art. VIII, § 1(a); N.J.S.A. 54:4-2.25. The statutory means to effectuate their constitutional right to equal taxation is by filing a complaint in this court challenging the assessment on their property. A challenge to a tax assessment will almost always require the taxpayers to submit to this court an

² Although an expert's written report generally is not admitted into evidence at trial in civil matters, it is the longtime practice of this court to admit expert appraisal reports in local property tax appeals to assist the court in making the mathematical calculations and analytical determinations necessary to conclude a true market value of the property under appeal.

appraisal of the value of their property. An appraisal will, as was the case here, include a detailed description of the property, interior and exterior photographs, and a floor plan.

Plaintiffs argue they should not forfeit their right to privacy in their home as a consequence of filing the evidence necessary to protect their constitutional right to equal treatment in taxation. While recognizing the Special Committee considered and rejected recommending excluding appraisal reports submitted in Tax Court matters from public disclosure, plaintiffs argue the Special Committee considered only those reports containing proprietary commercial information and not appraisal reports concerning the privacy interest of a taxpayer in their residence.

Plaintiffs also argue that in light of the narrowing of their motion, they seek to seal only a fraction of the Hill Appeal record. They contend the information that is the subject of their motion is of limited value to the public, because this court issued a written decision explaining at length how it determined the true market value of plaintiffs' home for tax year 2008 and most of the Hill Appeal record, including portions of the parties' appraisal reports, is available for public disclosure.

In addition, plaintiffs submitted a certification asserting the construction of their home was "the subject of intense public scrutiny and media attention[,]" including "attempts by the paparazzi to invade the privacy of the home[,]" which is not wholly visible from the street. Plaintiffs have hosted events at the home at which Governors and the Speaker of the House of Representatives were guests. On those occasions, a secret service detail and security personnel were required to secure the property. Plaintiffs have taken steps to ensure the privacy, safety, and security of the property for themselves and their guests by regularly requiring those who visit the property, including the appraisers involved in this matter, to sign a confidentiality agreement.

According to plaintiffs, "the interior home photographs and in depth descriptions" of the property "are extremely sensitive and private, and release could jeopardize not only the safety,

health and security of [their] family, but of those honored guests [they] choose to invite into [the] home." Plaintiffs recognize this court's opinion affirming the tax year 2008 assessment contains a description of their home, but argue "the items [they] seek to protect are much more descriptive, personal and intrusive and could be used by someone wishing to breach the security systems [they have] taken steps to provide."

Loigman argues this matter is a "garden variety" appeal of an assessment on a residential property, of the type routinely tried in the Tax Court without a sealed record. He argues the grand nature of plaintiffs' home is insufficient to distinguish it from any other residential property and the potential injuries asserted by plaintiffs are speculative. He notes plaintiffs should have expected their decision to challenge the tax year 2008 assessment on their property would result in public scrutiny of their home, as is the case with any taxpayer who files a residential tax appeal. Loigman argues the public has a right to know plaintiffs have not been treated with favoritism by the municipal tax assessor and how this court determined the true market value of plaintiffs' home for local property tax purposes. He points out that although the property was assessed at \$20,814,500, this court determined its true market value to be \$34,426,812 and, because the municipality did not file a counterclaim, the court did not raise the assessment on the property.

The court will address the record items that are the subject of plaintiffs' motion in turn:

1. PA 67 and PA 69.

These documents are printouts of email exchanges by counsel regarding pretrial matters. Plaintiffs' personal email addresses are included in the "cc" lines of the exhibits. They ask to seal those email addresses. Loigman concedes personal email addresses are often redacted from court records. It is apparent to the court plaintiffs' personal email addresses are confidential information, the submission of which was inadvertent. The email addresses are irrelevant to the issues that

were before this court and were in no way considered by the court in reaching its decision. The court identifies no harm to the public interest if plaintiffs' personal email addresses are redacted from the exhibits as inadvertent submissions. See R. 1:38-8.

2. PA 185 – PA 186.

These exhibits are aerial photographs of the property included in an appraisal report submitted at trial. The photographs each contain the word "Google" in the lower righthand corner, suggesting they were obtained from a commonly available resource.

The court concludes plaintiffs have not established disclosure of the photographs "will likely cause a clearly defined and serious injury to any person or entity" under Rule 1:38-11. While the court finds plaintiffs and their home have been the subject of intense public interest and scrutiny, there is nothing in the motion record establishing by a preponderance of the evidence how plaintiffs would be injured by release of the aerial photographs or that any injury would be serious or likely to occur.

Moreover, this court adopts the rationale of the Special Committee that the public interest in assuring the fairness of the process by which property taxes are levied outweighs the taxpayers' privacy interest in personal information contained in appraisal reports submitted to this court. While the Special Committee considered appraisal reports containing proprietary commercial information, this court concludes its rationale is equally applicable to appraisal reports containing information about a taxpayer's residence, absent a showing disclosure will likely cause serious injury to the taxpayer or any other person.

3. PA 205 – PA 207.

These documents are pages from an appraisal report submitted at trial and depict floor plans of the house. Again, the court concludes plaintiffs have not established release of the floor plans

"will likely cause a clearly defined and serious injury to any person or entity" under Rule 1:38-11. The court acknowledges plaintiffs' interest in maintaining their privacy and the security of their home. The floor plans, while detailed, are on small scale and are difficult to read. Plaintiffs do not identify any depiction on the floor plans of security systems protecting the home. In addition, as noted above, the public interest in disclosure of appraisal reports submitted to, and used by, this court to determine true market value is significant and outweighs plaintiffs' purported privacy interest in these documents.

4. PA 208 – PA 211.

These documents are pages from an appraisal report submitted to the court containing the expert's detailed description of the interior and exterior characteristics of the home. The pages describe the history of the construction of the home, various materials used to build the house, finishes, ceiling heights, room features, amenities, and exterior improvements. In addition, the documents provide a detailed description of the tax year 2008 assessment and the zoning restrictions applicable to the property. Plaintiffs have not established the disclosure of this information is likely to cause a clearly defined and serious injury to them or others.

There is, however, a single sentence on PA 210 that describes where an essential component of the home's security system is located. It is apparent to the court the sentence describing the location of an essential component of the home's security system contains confidential information, the submission of which was inadvertent. The location of an essential component of the home's security system is irrelevant to the issues that were before this court and was in no way considered by the court in reaching its decision. The court identifies no harm to the public interest if the sentence in PA 210 describing the location of an essential component of the home's security system is redacted from the exhibit. See R. 1:38-8. Prior to disclosure, the entire

sentence beginning on the fourth line of the first paragraph of PA 210 with "A portion . . ." shall be redacted as confidential information inadvertently submitted to the court.

5. PA 257.

This document is a page from an appraisal report submitted to the court at trial. The page contains the expert's detailed discussion of how he formulated his opinion of the true market value of the property under the cost approach to valuation. The discussion includes details of the actual costs incurred by plaintiffs when constructing the home, the expert's estimate of some costs, and his opinion of the hypothetical cost to replace the home. This page contain a description of the expert's analysis of a type routinely submitted to this court to determine true market value under the cost approach. There is nothing in this document suggesting its disclosure is likely to cause a clearly defined and serious injury to plaintiffs or any other person.

6. PA 263 – PA 302.

These pages constitute the addendum to an appraisal report submitted at trial. The exhibits include photographs of the interior and exterior of the home, the roadways near the home, entrance gates to the property, an aerial photograph of the property marked "Microsoft Virtual Earth[.]" a map of the neighborhood in which the property is located marked "Microsoft Virtual Earth[.]" a tax map (which most certainly is a public document), a topographical map of the property, floor plans (with no interior walls or features depicted), a letter from an architect stating his opinion of the amount of the livable square footage of the home, floor plans with interior walls and features depicted, a summary of expenses incurred by plaintiffs when constructing the home, and a flood hazard map of the area surrounding the property.

These documents are typical of those submitted to this court with appraisal reports and do not contain confidential information. The only aspect of these documents that cause the court

pause are the photographs of the interior of the home. Some of the photographs depict plaintiffs' furniture, table settings, and other personal property, none of which is obviously embarrassing or of an intimate nature. Those photographs, however, also depict features of the home. The appearance of plaintiffs' personal property in the photographs is incidental to the depiction of the interior of the home. The court used the photographs when determining the true market value of the home, as the house's characteristics are relevant to its value in the marketplace. While disclosure of the photographs will expose some of plaintiffs' personal property to public view, the court concludes plaintiffs have not established disclosure is likely to cause a clearly defined and serious injury to them or others. The court, therefore, finds plaintiffs have not established good cause for sealing these documents under Rule 1:38-11.

7. PA 327.

This document is the cover of an appraisal report submitted to the court at trial. The cover contains an aerial photograph of the subject property. As discussed above, plaintiffs have not established they or anyone else will likely suffer a clearly defined and serious injury as a result of the disclosure of an aerial photograph of their home.

8. PA 335 – PA 337; PA 341 – PA 415; PA 435 – PA 440; PA 452 – PA 453;
PA 455 – PA 460.

Each of these documents is a page from an appraisal report submitted at trial. They contain a description of plaintiffs' property, maps of the property's neighborhood, an aerial photograph of the home, photographs of the interior and exterior of the home, the expert's analysis under the cost approach to value, and the expert's adjustment grids reflecting his formulation of an opinion of true market value of plaintiffs' property. These documents contain nothing suggesting their public disclosure will likely cause a clearly defined and serious injury to plaintiffs or any other party. Plaintiffs have not satisfied Rule 1:38-11 with respect to these documents.

9. DR 2 – DR 3; DR 14 – DR 15.

These documents are pages from the municipality's brief filed in the Appellate Division. They contain a description of the property, which largely reflects the findings of fact set forth in this court's opinion and the details provided in the appraisal reports submitted at trial. Plaintiffs have not established that disclosure of these portions of the municipality's brief is likely to cause a clearly defined and serious injury to plaintiffs or anyone else.