Relevant Tax Court Decisions

I. County Tax Boards/Procedure

Harshad Patel vs. Maple Shade, (Tx Ct. 2013). Judge DeAlmeida upheld dismissal of appeal with prejudice where plaintiff's attorney faxed a letter to the County Tax Board requesting an affirmance without prejudice due to a Tax Court appeal pending for a prior year without first having obtained consent of either the assessor or attorney for the municipality. The municipality objected to the request. Plaintiff did not appear at the hearing, and the appeal was dismissed by the County Board with prejudice. Judge DeAlmeida affirmed the dismissal with prejudice.

Austin vs. Township of Pemberton, 25 N.J. Tax 362 (Tx. Ct. 2010). The petitioners appeared at the County Tax Board hearing and attempted to testify as to the recent purchase prices of their homes. They did not produce any comparable sales or have an appraiser prepare a report and testify. The Board dismissed, with prejudice, due to lack of any comparable sales or appraisal evidence. Judge DeAlmeida reversed, noting that while the testimony may be insufficient to warrant a reduction in the assessment, it still nevertheless satisfied the "some evidence" standard required by the statute.

DePaul Revocable Trust vs. Pine Hill, (unpublished Tx. Ct. 2017). Tax Court reversed a County Tax Board's dismissal of plaintiff's appeal with prejudice where plaintiff's counsel was prepared to proceed but called ahead to say she would be 15 minutes late. The Board dismissed for failure to appear before plaintiff's counsel arrived. Tax Court noted that dismissal is a drastic step that should only be granted in the most egregious circumstances and should not be granted unless it is clear that petitioner's conduct is deliberate.

Schaefer vs. Chatham, 27 NJ Tax 102 (Tx. Ct. 2013). Tax Court reversed a County Tax Board's dismissal of an appeal with prejudice where petitioner appeared with an attorney and an appraiser. The Board had dismissed the appeal with prejudice on a technicality because the appraisal report contained erroneous boiler plate language. "County Boards of Taxation have, as their paramount objection, a duty to administer justice in each individual appeal, and all doubts should be resolved against dismissal."

Jennings vs. North Brunswick, (unpublished Tx. Ct. 2011). Petitioner's attorney provided a list of comparable sales seven days prior to the hearing date, but due to his calendaring error appeared before the Board ready to try the appeal the day after the hearing was scheduled. He acknowledged the mistake and requested that the hearing be rescheduled, but the Board entered Judgment dismissing the appeal with prejudice due to the failure to appear on the scheduled hearing date. The Tax Court reversed, finding that counsel's behavior, while careless, was not deliberate and he actually appeared on the following day prepared to try his case. The County Tax Board had sufficient time to reschedule the matter and should not have dismissed the appeal with prejudice.

Kolvites vs. Manville, (unpublished Tx. Ct. Opinion 2009). Plaintiff's attorney preliminarily settled the petition of appeal before the County Board of Taxation with the tax assessor, who did not have final authority to approve the settlement. The day before the hearing the attorney for the petitioner faxed a letter and a partially signed Stipulation of Settlement to the County Tax Board and the assessor indicating that the matter had been resolved. The assessor did not receive the fax prior to the hearing. Petitioner's attorney never spoke with the attorney for the municipality, who had the final authority to approve the settlement. Plaintiff did not appear at the hearing the next day, and the Board dismissed for lack of prosecution. Petitioner appealed to the Tax Court. The Court found that petitioners' failure to appear was not deliberate and contumacious, since they believed that the matter was settled. The Court also indicated that the County Tax Board, after being advised by the municipality's attorney that the municipality did not approve the settlement, should have adjourned the matter and relisted it for hearing. The Court did note, however, that petitioner's attorney had engaged in "poor" practices in not attempting to contact the municipality's attorney and in speaking with the assessor without the attorney's knowledge and consent.

See also: *Wilshire Oil vs. Jefferson,* 17 NJ Tax 583 (Tx. Ct. 1998). (Petitioner should have been granted a short adjournment to enable its appraisal report to be completed and an unavailable witness to testify).

VSH Realty vs. Harding, 291 NJ Super. 295 (App. Div. 1996). Dismissal with prejudice is a drastic remedy and should only be granted in the most egregious circumstances where petitioner's behavior is deliberate and contumacious.

Ganifas Trust vs. Wildwood, 15 NJ Tax 722 (App. Div. 1996).

Pipquarryco, Inc. vs. Hamburg, 15 NJ Tax 413 (Tx. Ct. 1996).

Township of Evesham vs. Breen (unpublished Tx. Ct. 2016). Plaintiff moved for summary judgment before the Tax Court on the grounds that the County Tax Board should have dismissed plaintiff's appeal with prejudice for failure to prosecute. Plaintiff had moved at the County Tax Board to dismiss the appeal for failure to allow an inspection. The Board denied the motion and heard the appeal. Plaintiff then moved to dismiss with prejudice because defendant was not competent to present testimony as to valuation nor was the evidence presented competent. The Board allowed the testimony and reduced the assessment. The Tax Court found that the issue before it was the valuation of the property, not the failure to dismiss with prejudice, and denied plaintiff's motion.

Bear's West Condo vs. Bergen County Bd., 25 N.J. Tax 237 (Tx. Ct. 2009) condo units were reassessed pursuant to an approved Chapter 101 plan. The unit owners all received notice of the new assessments on or about February 1. Rather than file an appeal from the new assessments, the Condo Association requested that the County Board set aside the assessments and restore the previous year's assessments. The County Board rejected this request on March 6. The Association then filed an appeal on behalf of all unit owners on April 17, which was past the April 1 filing deadline. The Tax Court dismissed the appeals on the grounds that the appeal should have been filed by April 1. The Court also found that each individual unit owner should have

filed a separate appeal and the Association had no standing to file and present a class action on behalf of all unit owners.

II. Chapter 123

North Brunswick vs. Gochal, 27 NJ Tax 31 (Tx. Ct. 2012). The Tax Court reversed decision of County Tax Board reducing assessment where true value found by the Board fell between the common level range of the Chapter 123 Ratio.

III. Chapter 91

Pittius v. Old Bridge, (Tx. Ct. 2017) (Pet hotels are not income producing properties for purpose of Chapter 91).

975 Holdings, LLC v. Egg Harbor, (Tx. Ct. 2017) (Bankruptcy proceedings do not excuse owner from not responding to a Chapter 91 request).

George Street Holdings, LLC v. City of New Brunswick, (Tax. Ct. 2017) (A timely response by the owner to the assessor is required even if the owner feels the request is erroneous or ambiguous. Owner cannot simply ignore it).

Spring, Inc. v. Monroe, (Tx. Ct. 2017) (certified mail returned to assessor's office marked 'unclaimed." Court found that where certified mail was sent to correct address of owner and not claimed by owner did not justify a non-response by the owner. A failure to pay attention to the post office's notice to pick up mail, whether on purpose or inadvertently, does not equate to a lack of receipt of mail for purposes of Chapter 91).

The Easton, LLC v. New Brunswick, (Tx. Ct. 2017) (Chapter 91 request mailed by assessor was not confusing, and in any event owner, had duty to communicate with assessor within 45-day response period and ask for clarification).

Metz Family, Ltd. Partnership vs. Freehold, (Tx. Ct. 2018). Under the Monmouth County Pilot Program, the assessor must place the assessments on the tax rolls by November 1. In this matter, the assessor mailed the Chapter 91 request on October 5. The plaintiff failed to respond to the request. The forty-five day response period, however, extended beyond the November 1 date, and the assessor could not have used the information in placing the assessment on the tax rolls by that date. The Court, therefore, refused to dismiss the appeal and denied defendant's motion.

IV. Post Assessing Date Sales

Newport Center vs. City of Jersey City, 17 N.J. Tax 405 (Tx. Ct. 1998). The general rule is that post-assessing date sales may be used to corroborate an opinion of value based on pre-assessing date information. "So long as a proffered sale is not remote, the sale should be admitted for its rational prohibitive valuation inference." Sales

remote in time cannot be used, and the greater the time gap between the assessing date and sale date, the more likely the sale will be inadmissible. *See also, Little Ferry vs. Vecchiotti,* 78 N.J. Tax 389 (Tx. Ct. 1985), which held that "unless a subsequent sale is clearly barred by considerations such as remote time and location, or is virtually dissimilar to the property in question, the mere fact that it took place subsequent to the assessment date should not bar it from consideration in the valuation process."

Glen Wall Associates vs. Wall Township, 99 N.J. 265 (1985). The New Jersey Supreme Court held that a sale of a property which took place less than three (3) months after the assessment date should be utilized as an indicator of value.

See also, City of Atlantic City vs. Ginnetti, 17 N.J. Tax 354 (Tx. Ct. 1998) (post assessing date data was admissible as it was of assistance in ultimately assisting the court in determining what the fair market value of the subject property was).

City of Atlantic City vs. Boardwalk Regency Corp., 19 N.J. Tax 164 (App. Div. 2000).

V. Market Conditions

Residential: MLS data – *Reznick v. Marlboro,* (unpublished Tx. Ct. 2016) (wholesale reliance upon information provided by MLS data is questionable and must be verified with someone who has personal knowledge of the sale combined with a personal inspection of the interior and exterior of the sale).

VI. Spot Assessments

Jovsim, LLC v City of New Brunswick – (unpublished Tx. Ct. opinion 2017). Appeal by municipality to increase assessment based on recent sale of the subject property was not an impermissible spot assessment.

VII. Correction of Errors

Hanover Floral Co. v. East Hanover, 30 N.J. Tax 181 (Tx. Ct. 2017) (Court ordered Township to refund taxes paid by plaintiff in error where plaintiff notified defendant of the error but defendant continued to bill plaintiff and threaten tax sales).

VIII. Adjusting Comparable Data:

Adjustments that are too large suggest a lack of comparability between the sales and the subject property and present a misleading indication of the subject property's value.

Greenblatt v. Englewood, 26 NJ Tax 41 (Tx. Ct. 2010)

M.I. Holdings v. Jersey City, 12 NJ Tax 129 (Tx. Ct. 1991) (gross adjustments of 42% to 63% were too large and not probative of the property's true value)

MIR v. Paterson (unpublished opinion) court found that it was not enough for an expert to refer to data in his files when testifying on the stand to adjustments. The data must be in the report.

IX. Adjusting for Property Differences:

Qualitative vs. Quantitative: The Tax Court prefers quantitative, not qualitative adjustments.

MSGW Real Estate Fund vs. Mt. Lakes, 18 NJ Tax 364 (Tax. Ct. 1998)

Ganjoin vs. Woodbridge, (unpublished Tax Court opinion 2014)