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 SUPERIOR COURT
 SUPERIOR COURT
 HHB CV 196051630S
 2021 AUG 18 pm '21 CS
 MOZZICATO FAMILY, LLC I v JUDICIAL DISTRICT OF
 JUDICIAL DISTRICT OF NEW BRITAIN
 V. NEW BRITAIN:

TOWN OF WETHERSFIELD AUGUST 18, 2021

MEMORANDUM OF DECISION

The plaintiff, Mozzicato Family, LLC I (Mozzicato) brings this real estate tax appeal challenging the assessor's fair market valuation of the subject property located at 709-725 Silas Deane Highway in the town of Wethersfield (town) for the revaluation year of October 1, 2018 and subsequent years until the next town wide revaluation.

The subject property is a corner lot located on the Silas Deane Highway (Route 99) at the intersection with Byrd Road and Wells Road. The subject property, containing 1.28 acres of land, is improved with a single story "L"-shaped (rectangular) commercial/retail building of masonry and steel construction, built in 1970. The subject parcel is improved with a 30,000 square foot paved parking lot and driveway. The parking lot has 52 parking spaces and a driveway on the north side that services a drive through bank service window. A single family residential development abuts the subject to the west and across the street on the Byrd Road side of the subject. A commercial development is located across the Silas Deane Highway from the subject.

The plaintiff's appraiser, Robert R. Morra (Morra), provides a detailed description of the neighborhood where the subject property is located:

"The subject is located in the east central portion of the Town of Wethersfield. The property is located on the west side of Silas Deane Highway. Silas Deane Highway is a 4 lane undivided State Highway Route 99 that extends north and south a distance of 3+- miles through

*Electronic notice sent to all counsel of record.
 Sent to Cptr of Judicial Decisions. A-Jordan/poules, 8/18/21*

Wethersfield. The majority of the property immediately along the highway is commercially developed. The most significant commercial development is south of the subject to Interstate 91. The area around the subject is mixed. There is a mixed use, small neighborhood strip center to the north of the subject with a restaurant and several local businesses. The area immediately to rear and south of the subject is developed with single family homes. The area across the street from the subject is developed with several free standing commercial buildings that house a bank, an urgent care center, two gas stations, a large car wash, plus a small strip center. The extended area along Silas Deane Highway include several office building and numerous mostly local service and retail business, and restaurants." Plaintiff s Exhibit 2, p. 19.

The subject building covers a total of 15,220 square feet and 14,906 square feet of gross leasable area. Occupants of the subject, as of the date of revaluation, was, KeyBank National (4,300 sq. ft.); Sherwin Williams (3,960 sq. ft.) and Hanger Prosthetics & Orthotics (4,360 sq. ft.). The balance of the gross leasable area (2,286 sq. ft.) was vacant as of October 1, 2018 and still vacant at the present time.

Both Morra and the defendant's appraiser, Peter A. Vimini (Vimini), concluded that the highest and best use of the subject property, as of October 1, 2018, was its present use. Both appraisers agreed that the income approach to value was the most appropriate method to determine the fair market value of the subject as of the date of revaluation.

Relying on the income approach to value the subject property, which the assessor had valued, as of October 1, 2018, at \$3,232,470, Morra concluded that, in his opinion, the subject property had a fair market value of \$2,095,600. The defendant's appraiser Vimini, concluded that, in his opinion, the subject property had a fair market value of \$3,125,000.

Vimini also did a comparable sales approach to value. Morra decided not to use the sales approach because he could not find good comparable sales because of the large number of vacancies in the area of the subject. Vimini, on the other hand, looked for comparable sales in surrounding towns. Given the disparity between Morra's comparable sales in the nearby Silas Deane area and Vimini's comparable sales covering a wider three-town area, it is more appropriate to place greater weight on the income approach to value as did Vimini.

Of the two methods involved in the income approach using the capitalization process, direct capitalization and discounted cash flow, both appraisers selected the direct capitalization method.

Vimini describes the income capitalization approach as follows: "This approach is considered the most appropriate applicable form of estimating the subject's value. . . . Direct Capitalization via Mortgage Equity Analysis, and market extracted rates, is considered most appropriate with assumption of stabilized income and expenses. This is based upon capitalization of a stabilized single year's income e;x.pectancies, at a market-derived capitalization rate_ that reflects a specified income pattern and return on and of investment, all, of which are inherent in the single, determined, specified rate." Defendant's Exhibit D, p. 27.

Using the Mortgage Equity Analysis, Vimini concluded that the overall capitalization rate was 7.6%. Using the Market Extracted Rates, Vimini arrived at a range from 7.3% to 8.0%. Vimini concluded that using both processes resulted in an overall capitalization rate of 7.75% without applying a tax factor. Defendant's Exhibit D, p. 35. Vimini did not use a tax factor because tenants agreed to pay the real estate taxes.

Morra, using the same process as Vimini, valued the subject property under the income

approach considering the Mortgage Equity Analysis and the Market Extracted Rates, arrived at an overall capitalization rate of 9.24%. Plaintiff's Exhibit 3, p. 53. Whereas Vimini excluded the tax factor as part of his capitalization rate, Morra added taxes to the base overall capitalization rate of 8.82%. Since the plaintiff paid part of the taxes not reimbursed by some of the tenants, Morra concluded that 15% of the property taxes should be added to the overall capitalization rate.

Following the determination of the capitalization rate for the subject property, as of October 1, 2018, Vimini concluded that the net operating income (NOI) of the subject was \$242,311.

Dividing the NOI of \$242,311 by his capitalization rate of 7.75%, Vimini arrived at a fair market value of \$3,126,594, rounded to \$3,125,000 for the subject property, as of October 1, 2018. See defendant's Exhibit D, p. 36. .

Recognizing that a higher capitalization rate translates into a lower fair market value of real estate, and conversely, a lower capitalization rate translates into a higher fair market value of real estate, the 7.75% capitalization rate used by Vimini and the 9.24% capitalization rate used by Morra were supported by the underpinnings of their analysis.

Morra's market value is based on a net operating income of \$193,638 divided by the capitalization rate of 9.24%, resulting in a final fair market value of \$2,095,649.35, rounded to \$2,095,600. Plaintiff's Exhibit 3, p. 53.

Challenging the assessor's valuation of \$3,232,470 pursuant to § 12-111, the plaintiff first appealed to the town's board of assessment appeals (BAA). Following a hearing before the BAA on the plaintiff's application for relief, the BAA reduced the assessor's valuation to \$2,800,000, a

reduction in the plaintiff's assessment of \$432,470.

The process of appeal, from the doings of the assessor, in setting the fair market value of property, is described in the Board of Assessment Appeals Handbook, A Guide to Property Tax Administration for Connecticut's Municipal Boards of Assessment Appeals Revised Edition 2017 (Handbook) published by the Connecticut Association of Assessing Officers (CAAO).

The Handbook notes on page 5 as follows: "Assessment review relates to procedures that ensure property valuations are just and equitable. An extended and involved process, it begins with the Assessor and ends with the Board of Assessment Appeals. CGS sec. 12-62 and CGS sec. 12-55 provides that the assessor establishes the fair market value of all real estate in order to equalize the tax burden among property owners. . . . a critical part of that oversight is the Board of Assessment Appeals. The boards of assessment appeals are provided by statute to act as an independent body of review for property owners who wish to appeal their assessment after exhausting more informal channels of appeal such as the Assessor or the revaluation company."

Although the BAA is an administrative agency, any challenge to the decision of the BAA must be taken pursuant to the provisions of General Statutes § 12-117a which provides, in relevant part, as follows: "Any person . . . claiming to be aggrieved by the action of the . . . board of assessment appeals may make application, in the nature of an appeal therefrom . . . to the superior court"

The plaintiff, dissatisfied with the decision of the BAA, appealed to the superior court pursuant to General Statutes § 12-117a.

"In a § 12-117a appeal, the trial court performs a two step function. The burden, in the first instance, is upon the plaintiff to show that he has, in fact, been aggrieved by the action of the

board in that his property has-been overassessed. . . . In this regard, [m]ere overvaluation is sufficient to justify redress under [§ 12-117a], and the court is not limited to a review of whether an assessment has been unreasonable or discriminatory or has resulted in substantial overvaluation. . . . Whether a property has been overvalued for tax assessment purposes is a question of fact for the trier. . . . The trier arrives at his own conclusions as to the value of land by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value including his own view of the property. . . .

"Only after the court determines that the taxpayer has met his burden of proving that the assessor's valuation was excessive and that the refusal of the . . . [BAA] to alter the assessment was improper, however, may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains If a taxpayer is found to be aggrieved by the decision of the . . . [BAA], the court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the applicant's property." (Citations omitted; internal quotation marks omitted.) *Walgreen Eastern Co. v. West Hartford*, 329 Conn. 484, 492, 187 A.3d 388 (2018).

On the issue of aggrievement, both the defendant's appraiser and the BAA recognized that the assessor's valuation of \$3,232,470 was excessive. Therefore, it is well established that the plaintiff, in this case, was aggrieved by the assessor's action.

After hearing the presentation of evidence and the claims of the parties, it is difficult to resolve the valuation issue because the BAA, as an administrative agency, did not have a record for the court to review as the basis for the BAA's determination of value. The court recognizes

that the members of the BAA are elected officials of the town, and as residents of the town and presumably property owners, have a concern for treating all property owners and taxpayers fairly and equally. This concern is acknowledged in § 12-111 which provides; in relevant part, as follows: "Such board may equalized and adjust the grand list of such town and may increase or decrease the assessment of any taxable property"

It should be noted that, pursuant to § 12-111, this appeal is from the valuation set by the BAA and not an appeal from that of the assessor.

Regardless whether this action is an appeal from the assessor's valuation or the BAA's valuation, the charge to the court is to make a decision as to the fair market value of the subject property as of the date of revaluation. See *First Bethel Associates v. Bethel*, 231 Conn. 731, 78, 651 A.2d 1279 (199,5) ("[t]he goal of property valuation is to determine the 'present, true and actual value' of the subject property.").

Based on the evidence presented to the court and the claims of the parties, and a review of the appraisals of the parties' experts, which differed significantly, the court finds that the fair market value of the subject, as of October 1, 2018 and subsequent years until the next town wide revaluation, was \$2,775,000.

Accordingly, judgment may enter in favor of the plaintiff without costs to either party.

Aronson, JTR 8/18/21
Arnold W. Aronson CA--
Judge Trial Referee 0 f-f.