

**DOCKET NO. HHB-CV-19-6052136**

**SUPERIOR COURT**

**1160 ELM STREET ROCKY HILL LLC<sup>1</sup>**

**JUDICIAL DISTRICT  
OF NEW BRITAIN**

**VS.**

**ADMINISTRATIVE AND TAX  
APPEALS**

**TOWN OF ROCKY HILL**

**NOVEMBER 3, 2022**

**MEMORANDUM OF DECISION**

**INTRODUCTION:**

This matter is a real property tax appeal by KRE-BSL Husky Rocky Hill LLC (plaintiff) concerning the valuation and taxation by the Town of Rocky Hill (defendant) of certain real property comprising land and improvements located at 1160 Elm Street Extension in Rocky Hill. The court held a three-day trial on October 26-28, 2022.

1160 ELM STREET  
ROCKY HILL, CT 06067  
KRE-BSL HUSKY ROCKY HILL LLC  
v.  
TOWN OF ROCKY HILL  
NOV 3 2022

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<sup>1</sup> The foregoing plaintiff has been substituted by its successor in interest, KRE-BSL Husky Rocky Hill LLC.

*Electronic Notice sent to all counsel of record. A. Indraganah, 11-3-22*

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**FINDINGS OF FACT:**

Based upon the evidence introduced at trial, the court has made the following factual findings:

1. The property at issue consists of land and improvements located at 1160 Elm Street Extension in Rocky Hill (Map ID:3214; Parcel ID: 12-146) (Property). The Property is operated as a memory care assisted living facility known as The Atrium at Rocky Hill.
2. At all times relevant to this appeal, the plaintiff and its predecessors in interest owned the Property and had the responsibility of paying the taxes assessed thereon. In this regard, as of July 22, 2019 KRE-BSL Husky Rocky Hill LLC purchased the Property from 1160 Elm Street Rocky Hill LLC, is entitled to all of the benefits of this litigation, and was subsequently substituted as the plaintiff.
3. As of October 1, 2018 (Valuation Date), and on each of the 2018, 2019, 2020 and 2021 grand lists, the defendant valued the Property at \$8,879,400 and assessed taxes based upon seventy percent of the foregoing valuation and the applicable mil rate.
4. The defendant's market valuation of the Property as of the Valuation Date comprises \$2,700,000 for the land and \$6,179,400 for the building improvements.
5. The plaintiff timely appealed the defendant's valuation and taxation of the Property to the Rocky Hill Board of Assessment Appeals (Board), but the Board declined to make any change.

6. The plaintiff timely appealed the Board's action to this court.
7. The improvements on the Property operate as a memory care assisted living facility with 54 living units and 60 beds. <sup>2</sup> The improvements comprise a single story 34,272 square feet building which was constructed in 1999. The Property comprises 3.18 acres of land.
8. The Property is located in a mixed-use area and is convenient to highways and commercial centers.
9. The condition of the improvements is average.
10. A memory care facility generally renders a higher degree of service and care than a typical assisted living facility.
11. The facility on the Property is generally designed as a one-story facility consisting of two wings of residence rooms with a common area between and connecting the two wings. The facility must be staffed for the necessary services and supervision in each wing.
12. As of the Valuation Date, the facility was only approximately 67% occupied.
13. The facility has suffered declining occupancy rates with the 2016 occupancy rate at 85%, the 2017 occupancy rate at 77% and the 2018 occupancy rate at 65%.

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<sup>2</sup> Several of the units provide for double occupancy.

14. The facility was constructed in 1999 and has not been updated or refurbished since then.

The facility is in average condition but requires refurbishment from a cosmetic and aesthetic basis. Refurbishment would assist the facility in increasing its occupancy rate.

15. The Property and its facility earn revenue generally in four categories: room rent, care service, ancillary service revenue and community fees.

16. The plaintiff's expert, Courtney B. Lees, produced a report and testified that, using the sales comparison, income, and cost valuation approaches, she valued the Property, as of the Valuation Date, at \$5,100,000.<sup>3</sup>

17. The defendant's expert, Krystyna Gut, produced a report and testified that, using the sales comparison and income valuation approaches, the proper valuation of the Property as of the Valuation Date was \$10,462,677<sup>4</sup>.

18. The highest and best use of the Property is as currently improved.

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<sup>3</sup> The sales comparison approach yielded a valuation of \$4,900,000. The income approach yielded a valuation of \$5,100,000. The cost approach yielded a valuation of \$5,100,000. Ms. Lees reconciled these valuations to an overall valuation of \$5,100,000 as of the Valuation Date.

<sup>4</sup> This value is different from the \$10,570,000 valuation asserted in the expert's report because of a mistake concerning the value of the FF&E which the expert addressed in her testimony.

19. The Property was sold as part of a very large bulk transaction, of which the Property was only a very small part, on July 22, 2019, and that transaction allocated<sup>5</sup> a value of \$4,630,000 to the Property.
20. The facility experienced declining revenues and profits over the period from 2016 through 2018. Total operating revenues were \$5,254,591; \$5,044,526; and \$4,091,762 for 2016, 2017 and 2018 respectively. Net operating income was \$1,377,145; \$1,153,082; and \$501,023 in 2016, 2017 and 2018 respectively. See plaintiff s exhibit 1, pages 48 and 52 and defendant's exhibit A, page 65.
21. The court found that the sales comparison approach conducted by Ms. Lees was unreliable for several reasons. First, Ms. Lees used as a comparable an allocation within a very large bulk transaction which involved this Property as a very small portion of the overall transaction without adequately justifying why the allocation was a fair and accurate representation of value. Second, Ms. Lees used a bankruptcy auction sale as a comparison. Third, Ms. Lees employed large significant adjustments without adequately and concretely justifying them. Lastly, in general, the cross-examination of Ms. Lees concerning her execution of this sales comparison valuation approach substantially undercut her conclusion.

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<sup>5</sup> Allocations such as this can be influenced by factors other than value such as tax considerations and business/accounting considerations.

22. The court found that the income valuation approach conducted by Ms. Lees was inaccurate in one respect but was otherwise reliable. The projected expenses were substantially overstated, far exceeding actual expenses incurred at even higher occupancy rates than she was projecting, such as the actual expenses in 2016 and 2017. The overstatement of expenses was approximately two hundred thousand dollars. The modest projected increase in occupancy and revenue was appropriate. The capitalization rate, the rent coverage ratio and the deduction for fixtures, furniture and equipment (FF&E) was appropriate as well.

23. The cost approach valuation conducted by Ms. Lees was inaccurate in one respect but was otherwise reliable. In executing the cost valuation approach, Ms. Lees took a deduction of 35% for physical deterioration and an additional 20% for external obsolescence<sup>6</sup>. These deductions taken together were excessive and double counted for the same issue. Ms. Lees reported that the facility was dated and needed refurbishing, and that it was this dated look and lack of refurbishing that was the primary cause of the lower occupancy<sup>7</sup>. Ms. Lees also testified that the external obsolescence deduction was

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<sup>6</sup> The court did not accept Ms. Lees' explanation for the need to assign external obsolescence at all.

<sup>7</sup> The court accepted that the facility's dated appearance was a primary cause of dropping occupancy. In this regard, the court notes that the facility has consistently been operated by a manager which both sides agreed was a large, well-known and skilled manager for facilities of this type.

assessed for the low occupancy. The court finds that the same issue was double counted. Further, in any regard, a total depreciation deduction of 55% on this facility is clearly excessive. The facility is well maintained, and although it needs refreshing, the foregoing deductions are excessive. The court finds that total depreciation of 35% is appropriate. The foregoing amount represents straight line depreciation of the improvements.

24. The court found both the sales comparison and the income valuation analyses conducted by Ms. Gut to be unreliable for several reasons. First, her report in general contained numerous errors that required correction during her testimony. Second, her income valuation approach substantially increased occupancy and revenues without believable justification, particularly in view of historic performance and the fact that the same manager remained in place. Third, her income approach comprised entirely constructed financials without adequate ties to actual historic performance and adequate reasons for deviation therefrom.<sup>8</sup> Fourth, her sales comparison valuation employed numerous large adjustments that were not adequately justified<sup>9</sup>, and utilized comparable sales which

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<sup>8</sup> As an example, Ms. Gut derived her proposed expenses from confidential but allegedly comparable properties without adequate justification as to their application to this Property and without adequate justification for their deviation from this Property's actual expenses and financial performance. The court notes that Ms. Gut's projected expenses were proportionately substantially less than actual expenses when actual and projected occupancy was taken into consideration.

<sup>9</sup> Ms. Gut's sales comparison approach also did not properly adjust for square footage of the comparable facilities nor for the occupancy and financial performance of the comparables.

comprised a sale with a lease in place and a sale of an 80% interest without adequate justification. Lastly, Ms. Gut did not rely upon her own sales comparison valuation analysis in coming to a final value, but instead used the value achieved with her income valuation approach.

25. Utilizing Ms. Lees' income valuation approach with the only change of decreasing expenses by \$200,000 yields a net operating income of \$947,000, instead of \$747,000, and a valuation of \$6,585,583.23 which the court rounds to \$7 million.

26. Utilizing Ms. Lees' cost valuation approach<sup>10</sup> with the only change of disallowing her 20% deduction for external obsolescence yields a value of \$6,927,850, which the court rounds to \$7 million. The court allowed for straight line depreciation for the facility's 19-year age and its 55 year expected life given no substantial renovation or capital investment since construction.

27. In view of the foregoing, the court concludes that the value of the Property as of the Valuation Date was \$7 million.<sup>11</sup>

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<sup>10</sup> The court finds that the cost valuation approach is particularly appropriate for specialized facilities, such as this one, which are not easily converted to other uses.

<sup>11</sup> The court notes that an overall valuation of \$7 million yields a value per unit of approximately \$130,000 per unit which compares appropriately to the average values per unit reported in the tables on plaintiff's exhibit 1, pages 41-42. See for example the reported average value of \$127,300 per unit for facilities that are over 15 years old, as well as the average of the highlighted values in the tables.

**STANDARD OF REVIEW:**

A trial court hears tax appeals pursuant to General Statutes §§ 12-117a and 12-119 de novo, and, if the taxpayer is aggrieved, must arrive at its own conclusions as to the value of the property at issue by evaluating all of the evidence, including the opinions of appraisers. The court is to apply its general knowledge and experience in evaluating all of the evidence presented. See *Davis v. Westport*, 61 Conn. App. 834, 840, 767 A. 2d 1237 (2001).

The trial court must first determine whether the taxpayer is aggrieved by the assessment, specifically whether or not the assessment is excessive. A finding of aggrievement concerns both issues of fact and of law. An affirmative finding of aggrievement is a condition precedent to engaging the court's broad discretionary power to grant appropriate relief. In exercising its discretion, the court should correct the valuation if it is found to be excessive. Whether the property has been overvalued is a question of fact. It is the taxpayer's burden to show that the valuation is excessive, and the trial court must determine whether the taxpayer has offered sufficient, credible evidence that the subject property has been overvalued. When making a claim pursuant to § 12-119, the plaintiff must prove more than mere overassessment as in § 12-117a, proving instead that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes applicable to determining the valuation of such property.

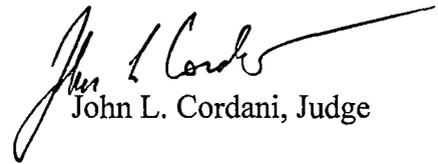
**ANALYSIS:**

The effective complaint is a four-count amended complaint dated September 16, 2022 challenging the defendant's valuation, as of the Valuation Date, and taxation of the Property on the 2018, 2019, 2020 and 2021 grand lists respectively. Each count presents a claim pursuant to § 12-117a with count one directed to the 2018 grand list, count two directed to the 2019 grand list, count three directed to the 2020 grand list and count four directed to the 2021 grand list. Each count alleges that the defendant's asserted full market valuation of the Property was \$8,879,400 on each of the grand lists challenged and that taxes were assessed based upon seventy percent of the foregoing value and the then applicable mil rate. The complaint further alleges that on July 22, 2019, the Property was sold to KRE-BSL Husky Rocky Hill LLC and substitutes the foregoing plaintiff for 1160 Elm Street Rocky Hill LLC, further alleging that the new plaintiff is entitled to any and all benefits of this litigation.

In view of the findings of fact and the court's conclusion that the proper full market valuation of the Property as of the Valuation Date was \$7 million, the court concludes that the plaintiff is aggrieved. The court has found that the valuation of the Property applied by the defendant on the 2018, 2019, 2020 and 2021 grand list was excessive. Accordingly, the court will enter judgment for the plaintiff on counts one through four.

**JUDGMENT:**

Judgment enters for the plaintiff on counts one through four. The full market valuation for the Property shall be \$7 million on the 2018, 2019, 2020 and 2021 grand lists and the Property shall be taxed using seventy percent of the forgoing valuation and the applicable mill rate. The court declines to award costs or interest.

  
John L. Cordani, Judge