

HHB CV 176037885

873 WB LLC

v.

CITY OF HARTFORD

OFFICE OF THE CLERK SUPERIOR COURT
SUPERIOR COURT

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JUDICIAL DISTRICT OF NEW BRITAIN
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JUNE 27, 2019

MEMORANDUM OF DECISION

The plaintiff, 873 WB LLC, brings this tax appeal challenging the assessment of its property located at 873 West Boulevard in the city of Hartford (city) on the grand list of October 1, 2016. The city's assessor determined that the fair market value of the subject property was \$11,205,500.

The subject property is a large apartment building located in the west end of Hartford near the West Hartford town line. The plaintiff purchased the subject building on December 3, 2015 for \$11,550,000.

The subject building, constructed in 1971, consists of an apartment building containing 165 units with a mixture of 8 studio apartments, 120 one-bedroom apartments and 37 two-bedroom apartments. The total gross square footage of the subject is 151,357 square feet.

Plaintiff's appraiser, R. Bruce Hunter (Hunter) describes the subject apartment building as follows:

"The structure consists of two mirror image buildings, each with a 5-story bay in front of a rear, 3-story bay, to accommodate the tiered site terrain. The structures are linked by the common parking area that is covered by the third floor of both structures. As such, the following description of one building applies to the second building, except as indicated.

*Electronic notice sent to all counsel of record.
mailed to official reporter of judicial opinions.
A Jordanopoulos, Ct Officer 6/27/19.*

"The ground/first floor consists of a mix of support space, mechanicals space and dwelling units. Support space includes a formal management/leasing office suite, the storage cubicle bay, a single room fitness center and demised mechanicals room for central heating systems, an elevator mechanicals room and a demised room for the electrical panels for main services and tenant meters. Three finished dwelling units also occupy the ground floor.

"The second floor is limited to the same footprint as the ground floor, yet is at grade with the covered parking level adjacent to the rear. An at-grade tenant entrance lobby containing the second elevator core for each building directly adjoins the covered parking surface. The second floor is configured entirely with dwelling units mixed in accordance with the inventory summary that follows.

"Floors 3, 4 and 5 integrate the front 5-story bay with the rear 3-story bay. Each floor level is configured with the same mix of residential dwelling units in accordance with the inventory summary that follows. Common areas serving the dwelling units include an interior hallway system leading to the elevator cores and the stairwell cores. A common laundry room is located on each floor, containing two clothes washers and two dryers, managed by an independent third party." (Plaintiffs Exhibit 1, p. 17.)

The apartment complex fronts on West Boulevard, South Whitney Street and on Capitol [Avenue] and sits on 2.046 acres of land. See plaintiffs Exhibit 1, p. 14.

Hunter, the plaintiff's appraiser, was of the opinion that the fair market value of the subject, as of October 1, 2016, was \$8,250,000. On this same date, the city's appraiser, Rocco Quaresima (Quaresima) was of the opinion that the fair market value of the subject was \$11,600,000.

The plaintiff claims that it overpaid for the subject property by approximately \$3,000,000. The plaintiff presented at trial the testimony of its property manager, Paul Fornaby (Fornaby). Fornaby testified that the high price paid for the subject was "based on overly optimistic financial numbers proffered by the listing broker, as well as the plaintiff's general unfamiliarity with the Hartford real estate market." (Plaintiff's 5/6/19 brief, p. 8.)

Fornaby testified that he had thirty years of real estate experience and that he had inspected the property prior to the sale. Fornaby's company owned four apartment complexes and managed 140 apartment buildings in the state of New York. Fornaby was not a novice in the field of real estate.

An examination of the Offering Report of Marcus & Millichap, Real Estate Investment Services, plaintiff's Exhibit 3, shows an offering price of \$12,750,000 for the subject property with an investment highlight of approximately \$500,000 of recently completed capital improvements.

Plaintiff's Exhibit 4 is an Offering Memorandum of Boulevard West Apartments by Marcus & Millichap containing a 34-page detailed report on the subject property.

Plaintiff's Exhibit 4 goes into great detail setting forth pricing and financial analysis, a full property description, rent comparables and a demographic analysis of the subject. Interestingly, the offering memorandum's confidentiality and disclaimer statement provides as follows:

"The information contained herein is not a substitute for a thorough due diligence investigation. Marcus & Millichap has not made any investigation and makes no warranty or representation, with respect to the income or expenses for the subject property"

It rings hollow when an experienced property manager claims that he was misled by an offering report in the purchase of the subject property and that he was unfamiliar with the Hartford real estate market, including the city's taxing policies.

In his appraisal report, Hunter notes that considering the sales comparison approach, his valuation was affected to a large extent by the deferred maintenance of the subject's apartment units. See plaintiffs Exhibit 1, p. 21. See also plaintiffs Exhibit 1, pp. 18-19, referring to substantial deferred maintenance to individual apartment units and mechanicals to include roof repairs following the purchase of the property in 2015. This statement is at odds with plaintiffs Exhibit 4, p. 6, that a new roof was installed in the subject. In addition, Plaintiffs Exhibit 4, p. 6, further discloses that part of the \$500,000 capital improvements consisted of:

- Select unit upgrades to kitchens, bathrooms and flooring;

- Complete renovation of elevator cabs;

- Installation of new hot water storage tanks;

- Installation of JENN heating control systems;

- Laundry room upgrades;

- Parking area upgrades;

- Numerous interior upgrades to common areas;

- Renovated lobbies;

- Fire alarm system - upgraded to code.

Hunter was of the opinion that the highest and best use of the subject was for continued rental apartment use and concluded that the sales comparison approach and the income approach to value were appropriate.

Hunter, in his analysis of the market, did so using comparables based on a comparison of the sale price per apartment units.

Hunter relied on four apartment sales to arrive at his conclusion of value. These sales were: 22 Elliot Street; 145 Sisson Avenue; 44 New Britain Avenue and 194 Washington Street. Hunter's goal was to develop a market based on a price per apartment unit, land included. Using these four sales, Hunter concluded that the market on the date of revaluation per dwelling unit in the city of Hartford was \$50,000 per unit or \$8,250,000 for the subject property. See plaintiffs Exhibit 1, pp. 22-23.

Hunter did not use the subject property in his analysis of comparable sales to establish market value. Hunter based his opinion on the information provided to him by Fornaby who told him that "[t]he buyers were from out of state and were not familiar with local market conditions. When, questioned, the buyers stated that they purchased the property based on a sales pro-forma provided to them." (Plaintiffs Exhibit 1, p: 1.)

Using the income approach, Hunter arrived at a net operating income (NOI) of \$1,072,305 to which he applied a capitalization rate (cap rate) of 13% for a valuation of \$8,248,500 as of October 1, 2016. See plaintiffs Exhibit 1, pp. 29-30. Hunter's cap rate of 13% was based on a cap rate of 7.8% and an effective tax rate of 5.2%. See plaintiffs Exhibit 1, p. 32. Hunter's tax rate came from multiplying the city's tax rate of 74.29 mills (or 0.07429) by the 70% assessment ratio to arrive at the overall tax rate of 5.2%.

Hunter's final determination of the valuation of the subject, using the sales comparison

approach and the income approach, was \$8,250,000.¹

The city's appraiser, Quaresima, using the income approach to value, arrived at NOI of \$1,094,124. See defendant's Exhibit A, p. 79. As Quaresima noted, there was no significant difference between Hunter's and Quaresima's NOI's. 'The only difference between Hunter's value of \$8,250,000 and Quaresima's rounded value of \$11,600,000 using the income approach, is the cap rate selected by each appraiser. Hunter used a cap rate of 13.0% (base on a cap rate of 7.8% and an effective tax rate of 5.2%) to arrive at \$8,248,500. Quaresima used a cap rate of 9.40% based on a cap rate of 7.0% and the effective tax cap rate of 2.4%.

Quaresima's development of a cap rate is based on his determination that the highest and best use of the subject property, as of the date of revaluation, was as a condominium complex. See defendant's Exhibit A, p. 78: "The highest and best use of the subject as of the date of value is for declaration as a condominium complex with continued operation as a rental property. As of October 1, 2016, the assessment ratio for residential properties was 32.21%. Therefore, the tax - loaded cap rate is calculated as follows: 32.21% assessment ratio x 74.29 mills (.07429) = 2.4%. The tax-loaded cap rate equates to approximately 9.40% (7.0% + 2.4%)."

The difference between Hunter's selection of a cap rate and Quaresima's selection of a cap rate is that Hunter's tax-loaded cap rate was based on 70% of the Hartford mill rate of 74.29 mills whereas Quaresima's tax-loaded cap rate was based on an assessment ratio of 32.21% that applied only to residential real estate. Quaresima used an assessment of 32.21% because he theorized that if the subject was treated as a condominium complex, the individual owners of the

¹ See plaintiffs Exhibit 1, p. 32. Hunter made two market valuations. The first was \$8,250,000. The second was \$8,025,000. The plaintiff selected the valuation of \$8,250,000 in its post-trial brief.

condos would be assessed as residential, not as commercial.

From a developer's standpoint, it may make sense to convert the subject property into a condominium complex as opined by Quaresima, however, there was no indication that the prior owner or the purchaser of the subject property had any intention of buying the subject for a conversion to a condominium complex. The use of the subject, at the time of purchase, was for rental income. See, e.g., *Saybrook Point Marina Partnership v. Old Saybrook*, 49 Conn. App. 106, 111, 712 A.2d 980 (1998). The court finds Quaresima's use of the market sales approach, based on rental income of apartments as condominiums, somewhat confusing.

Before an assessor can consider changing the essential character of the subject for tax purposes from a rental apartment complex to the essential character of a condominium complex, the property owner must show that it actually had begun to use the subject as a condominium. See *Griswold Airport, Inc. v. Madison*, 289 Conn. 723, 733, 961 A.2d 338 (2008). Such is not the case here. As noted in the plaintiff's 5/6/19 brief, p. 4, there was no consideration given by Quaresima to the statutory requirements that must be met prior to a condominium conversion.

From the evidence presented, Quaresima's valuation of the subject using the highest and best use as a condominium rental complex, cannot be justified. Quaresima's use of the sales comparison approach and the use of the income approach, related to condominiums, fails to support his opinion of the fair market value of the subject at \$11,600,000, as of October 1, 2016. It is important to note that the value of the subject for assessment purposes is determined at the time of revaluation, not some future use of the property that may be more productive of income.

Recognizing that it is not the city's burden to defend the action of the assessor in determining the assessment value of the subject for tax purposes, see *Ireland v. Wethersfield*, 242

Conn. 550, 559, 698 A.2d 888 (1997), it still remains the plaintiff's burden to show that it was aggrieved by the assessor's assessment value.

Although Quaresima's valuation process based on condominium use is misplaced, it is difficult to rationalize Hunter's selection of comparable sales to develop his market value of the subject, as of October 1, 2016. See *United Technologies Corp. v. East Windsor*, 262 Conn. 11, 17 n.10, 807 A.2d 955 (2002). Yet, Hunter chose not to use the subject sale in his development of the market based on the plaintiff's claim that it overpaid for the purchase.

As Quaresima contends, the sale of the subject property ten months prior to the date of revaluation, was an arms length transaction between a willing buyer and a willing seller, neither under any compulsion to buy or sell. The court agrees with Quaresima that the subject sale should have been the standard for comparison with other sales selected as comparables. See *Walgreen Eastern Co. v. West Hartford*, 329 Conn. 484, 507, 187 A.3d 388 (2018).

Given the problems posed in both Quaresima's and Hunter's analyses dealing with the market sales approach, the use of the income approach is more credible. Investors in commercial real estate are more likely to consider the income that the property produces. As noted in *The Appraisal of Real Estate* (12th Ed. 2001) p. 471, "[i]ncome producing real estate is typically purchased as an investment, and from the investor's point of view earning power is the critical element affecting property value."

Giving weight to Hunter's final valuation of \$8,250,000 under the income approach and Quaresima's final valuation of \$11,550,000 under the sales approach, which is based on a per unit value of \$70,000, compared to Hunter's per unit valuation of \$50,000, the court finds that the fair

market value of the subject, as of October 1, 2016, is \$10,250,000.²

The plaintiff has brought this action pursuant to an amended complaint containing three counts. Count 1 challenges the assessor's valuation for the assessment year of October 1, 2016. Count 2 challenges the assessor's valuation for the assessment year of October 1, 2017. Count 3 challenges the assessor's valuation for the assessment year of October 1, 2018. However, none of the three counts in the plaintiffs amended complaint identifies the statutes related to real estate tax appeals. See Practice Book § 10-3. Allegations based on statutory grounds must be pleaded.

Paragraph 6 of each of the three counts also alleges that the action of the assessor was "unreasonably excessive, disproportionate and unlawful," which language tracks the language in General Statutes § 12-119.³ The allegations in each count also alleges that the plaintiff appealed the action of the assessor to the city's board of assessment appeals (BAA) which is mandatory for an appeal to be taken under General Statutes § 12-117a.

Section 12-119 deals with a claim made by a taxpayer that the action of the assessor was illegal.⁴ Section 12-117a deals with a taxpayer claiming that he or she was aggrieved by the action of the assessor overvaluing the taxpayer's real property for assessment purposes.

No evidence was introduced during the trial that would support the plaintiffs claim that

² An important factor for the court in arriving at the valuation of \$10,250,000 was the sale of the subject at \$11,205,500 close to the date of revaluation.

³ General Statutes § 12-119 recites, in relevant part, as follows: "When it is claimed that a tax has been laid on property ...was computed on an assessment which, under all the circumstances was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property"

⁴ See *Redding Life Care, LLC v. Redding*, 308 Conn 87, 105, 61 A.3d 461 (2013).

the assessor's valuation was unreasonably excessive or unlawful. However, it is the plaintiffs allegation that it appealed the assessor's valuation to the BAA, bringing this action within the language of §12-117a.

Accordingly, judgment may enter in favor of the plaintiff, as to the first, second and third counts pursuant to §12-117a. Plaintiff's claims that the city's assessor's actions were unlawful or illegal are unsupported, and therefore, judgment may enter in favor of the defendant as to counts relating to § 12-119.

No costs are awarded to either party.



Arnold W. Aronson
Judge Trial Referee