

DOCKET NO. UWY-CV-20-6054491

SUPERIOR COURT

93-1 BUSINESS TRUST

JUDICIAL DISTRICT
OF WATERBURY

VS.

CITY OF WATERBURY MARCH 8, 2023

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is a property tax appeal by 93-1 Business Trust (plaintiff) concerning the valuation and taxation by the City of Waterbury (defendant) of certain real property located at 1805 North Main Street in Waterbury. The court held a trial on March 1, 2023.

FINDINGS OF FACT:

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

1. The property at issue comprises real property located at 1805 North Main Street in Waterbury with tax Map/Lot 0149-0209-0041 (Property).
2. At all times relevant to this appeal, the plaintiff owned the Property and had the responsibility of paying the taxes assessed thereon.

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3. As of October 1, 2019 (Valuation Date), the defendant valued the Property at \$2,031,266 and assessed taxes based upon seventy percent of the foregoing valuation and the applicable mil rate.
4. The plaintiff timely appealed the defendant's valuation and taxation of the Property to the Board of Assessment Appeals (BAA), but the BAA denied the plaintiff's appeal.
5. The plaintiff timely brought claims pursuant to General Statutes § 12-117a and § 12-119 in this court further challenging the defendant's valuation and taxation of the Property.
6. The defendant's previous valuation of the Property as of October 1, 2017 was \$1,354,172. On January 28, 2020, the defendant increased its valuation of the Property for the October 1, 2019 grand list to \$2,031,271, an increase of \$677,099. The foregoing increase was prompted by renovations to the Property.
7. Improvements, renovations and repairs generally do not directly translate to increases in value on a dollar-for-dollar basis as compared to the cost of such improvements, renovations and repairs. Instead, the value added as a result of such improvements, renovations and repairs must take into account the types of work done, the quality of the work, the relationship between the work done and the use of the property, the desirability of such improvements to the market, and the market valuation forces in effect.
8. The Property comprises 1.67 acres which is zoned general commercial.
9. The Property has a onestory single tenant retail building containing 10,769 square feet of gross leasable area which was built in 1998.

10. The Property is, and was at relevant times, leased by Family Dollar Stores of Connecticut LLC through a lease that was signed in August 2019, commenced in October 2019, has a ten-year lease term and has four five-year lease term extension options (Current Lease). Accordingly, the term of the Current Lease will range from ten years to thirty years depending upon the tenant's choices.
11. The plaintiff's expert, Mr. Sean Hagearty, produced a report and testified that, using the income and sales comparison valuation approaches, he valued the Property, as of the Valuation Date, at \$1,250,000.
12. The defendant's expert, Mr. William Kane, produced a report and testified that, using the income and sales comparison valuation approaches, he valued the Property as of the Valuation Date, at \$2 million.
13. The highest and best use of the Property is as a commercial retail.
14. The building on the Property was originally constructed in 1998 and has 10,769 square feet of gross leasable area. The building was originally constructed as a RiteAid pharmacy location and was converted and updated as a dollar store commercial retail location.
15. The building and its associated parking lot were in poor condition just prior to the commencement of the Current Lease and were in need of repairs and renovation before the Family Dollar could begin operations on or about October 16, 2019. In connection with the Current Lease, the plaintiff performed repairs and improvements that cost it

approximately \$127,000. Family Dollar also performed renovations prior to commencement of its operations. Although the cost of Family Dollar's renovations is not known with accuracy, the court accepted that the Family Dollar renovations added \$215,000 in value to the Property. See the last paragraph of plaintiff's exhibit 4, on page 39.

16. The Current Lease rent is fixed for the first five years at \$15.00 per square foot and then increases to \$15.75 per square foot for the second five years of the initial term. Further increases apply if the term extension options are deployed by the tenant. Accordingly, the average rent over the ten-year term is \$15.375 per square foot. The Current lease is a modified net lease with the plaintiff landlord paying for the real estate taxes, insurance on the building and structural maintenance.

17. The court found that the income capitalization approach was the most reliable method of valuing the Property and accepted the income capitalization approach executed by Mr. Hagearty labeled by him as the "Leased Fee Analysis".¹ but with the following changes. The court used the average rent of \$15.375 per square foot² over the term of the lease to

¹ The court found this approach to be reliable because a new ten-year lease was in place with a stable, credit worthy tenant. Further, the approach was reflective of the actual facts in place given the new long-term lease and was consistent with the market conditions.

² This more accurately determines the actual income stream over the set initial term of the lease.

determine gross income, the court accepted a base capitalization rate of 6%³, and the court used a management fee of 2%.⁴

18. Effective gross income is \$165,573. Total expenses are \$10,203. Net operating income is \$155,370. Overall capitalization rate is 10.21%.

19. In view of the foregoing, the value of the Property is \$1,521,743, which the court rounds to \$1.6 million.⁵

STANDARD OF REVIEW:

A trial court hears tax appeals pursuant to §§ 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

³ The court found that the lower base capitalization rate was appropriate given the new ten-year lease, the stable credit worthy tenant and the fact that the renovations which had been conducted placed the improvements in a condition that was approximately equal to new. See the base capitalization rate range cited by Mr. Hagearty in plaintiff's exhibit 4 on page 54 of 6% to 6.5%. The court did not find that the modified net nature of the Current Lease would increase the capitalization rate particularly given the potential thirty years of stable lease and the built in increases. Responsibility for taxes and insurance represents both an opportunity and a risk.

⁴ In view of the single credit worthy tenant, the renovations and the new ten-year lease, the court found that a 2% management expense was appropriate. The defendant's expert also estimated a 2% management expense.

⁵ This value equates to approximately \$148 per square foot which compares nicely to other dollar stores. On page 58 of plaintiff's exhibit 4, Mr. Hagearty specified a value range of \$144.97 to \$233.15 per square foot for reference dollar stores. The court's rounding up of the calculated value reflects the low end of this reference range. See also defendant's exhibit I, at page 43 for a similar value range of \$144.97 to \$243 per square foot. The court notes that the most comparable dollar store referenced is the Family Dollar store located at 91 Cooke Street in Waterbury which was sold on March 30, 2015 for \$144.97 per square foot. This value also compares properly with the 2017 valuation plus the value of the repairs and renovations.

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). Market value has been defined as the value that would be fixed in fair negotiations between a desirous buyer and a willing seller, with neither under undue compulsion to make a deal. In general, there are three approved approaches to determining market value: the sales comparable approach, the income capitalization approach, and the cost approach. See *Uniroyal Inc. v. Board of Tax Review*, 174 Conn. 380, 390 (1978). See also General Statute § 12-62(b)(2).

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 dated April 7, 2020. The complaint contains two counts. Count one asserts a claim pursuant to General Statute § 12-117a challenging the defendant's valuation and taxation of the Property as of October 1, 2019. Count two asserts a claim pursuant to General Statute § 12-119 challenging the defendant's valuation and taxation of the Property as of October 1, 2019. In view of the court's findings of fact, the plaintiff is aggrieved.⁶

The court has used the income valuation approach, as deployed by the plaintiff's expert, with certain changes specified and explained by the court, to determine a value for the Property of \$1.6 million. The court finds that the foregoing value represents the most reliable income valuation analysis and is most consistent with the per square foot value of sales of comparable dollar stores in the area. The foregoing value is also generally consistent with 2017 grand list valuation when the value of the subsequent substantial improvements and renovations is taken into consideration. The valuation dispute between the parties arose from honest differences of opinion. The court declines to award interest. The court will enter judgment for the plaintiff on count one, but for the defendant on count two.

⁶ The court notes that even the defendant's expert valued the Property less than the challenged valuation.

JUDGMENT:

Judgment enters for the plaintiff on count one. The proper valuation of the Property on the October 1, 2019 grand list is \$1.6 million. Judgment enters for the defendant on count two.


John L. Cordani, Judge

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Decision entered in accordance with the foregoing. Notice of the availability for viewing in the electronic file sent to all counsel of record on 3/8/2023. Copy emailed to the Reporter of Judicial Decisions 3/8/23.
Fran Baraco
Assistant Clerk.