

DOCKET NO. HHB-CV176037379S

SUPERIOR COURT

GAIA COLCHESTER LLC

JUDICIAL DISTRICT OF

V.

NEW BRITAIN

TOWN OF COLCHESTER

MARCH 6, 2020

MEMORANDUM OF DECISION

The plaintiff, GAIA Colchester, LLC ("GAIA") brings this tax appeal challenging the assessor's valuation of \$5,814,300.00 for the 2016 Grand List placed upon its real estate known as Colchester Courtyards, a multifamily property containing 92 dwelling units and located at 12 Balaban Road, Colchester, Connecticut (the "Property"). GAIA acquired the Property on August 4, 2010 for \$5,400,000.

The trial took place on July 25, 2019. The only two witnesses called by the plaintiff were Todd Isaacson, the plaintiff's appraiser, and John Chaponis, the Colchester Assessor. On September 10, 2019 the plaintiff rested without calling additional witnesses. Thereafter the defendant made a motion to dismiss for failure to make out a prima facie case pursuant to Practice Book § 15-8 as to which the court reserved decision and the defendant rested without calling any witnesses. For the reasons articulated by the court in *Thomas v. City of West Haven*, 249 Conn. 385, 391, 734 A.2d 535 (1999), the court denies the Motion to Dismiss and considers the case based on the credibility of the witnesses.

The plaintiff's appraiser, Todd Isaacson, presented a report dated September 18, 2018 in which he opined that the fair market value of the Property as of October 1, 2016, was \$3,345,000.

His report contained the following language:

Judicial District of New Britain
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The subject is an existing multifamily property containing 92 dwelling units. The improvements were constructed in 1964 and are located on a single parcel with a reported site area of 21.48 acres or 935,669 square feet.

The subject property also utilizes on-site well water and septic systems that are original to the property and are also at the end of their physical lives with system failures reported in both systems over the past four years including prior to the effective date of valuation. A detailed analysis including information provided by the State of Connecticut Department of Energy and Environmental Protection (DEEP), the State of Connecticut Department of Public Health, the Town of Colchester Department of Public Works (DPW) and a third party engineering firm retained by the subject owner (Lenard Engineering) is presented within the attached report.

Extraordinary Assumptions and Hypothetical Conditions

The value conclusions are subject to the following extraordinary assumptions that may affect the assignment results. An extraordinary assumption is uncertain information accepted as fact. If the assumption is found to be false as of the effective date of the appraisal, we reserve the right to modify our value conclusions.

1. Costs for replacement/remediation of the current waste water system issues at the subject are based upon information provided by the State of Connecticut DEEP, the Town of Colchester Department of Public Works and Lennard Engineering.

Market value is defined as: "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale the buyer and seller each acting prudently and knowledgeably..."

The "detailed analysis" of the costs associated with remediation/replacement of the well water systems and the septic system consisted of the following documents in Addendum D to the appraisal report: Excerpt from a report by Lennard Engineering date 4/6/2010 entitled "Opinion of Probable Cost- Route 1 Sanitary Sewer Extension, Colchester Courtyard Apartments," which stated a total estimated cost of \$1,028,100.00; Standard Form Agreement between GAIA and Aqua

Compliance Specialists for the provision of 20,000 gallon water tank, booster pumps and piping to be completed March 31, 2018 for a price of \$299,049; Lennard Engineering Opinion of Probable Cost Proposed Standby Generator dated 10/19/16, which states an estimated price of \$85,000. The total of all those estimates was \$1,412,149.

Mr. Isaacson arrived at his opinion as to fair market value using first the Sales Comparison Approach in which he considered comparable sales and ultimately arrived at an "indicated value" of \$5,704,000. He then adjusted for "deferred maintenance" in the amount of \$2,050,000 to arrive at a fair market value of \$3,654,000.

Mr. Isaacson next used the Income or Direct Capitalization analysis and arrived at an indicated value of \$5,423,526 and then adjusted for "deferred maintenance" of \$2,050,000 to arrive at a fair market value of \$3,400,000. He then "reconciled" the two values to arrive at his ultimate conclusion of fair market value of \$3,450,000.

As stated above, while the appraisal report only documented \$1,412,149 as estimates for repair/replacement of the septic system and well, Mr. Isaacson deducted \$2,050,000 for the deferred maintenance. It is unclear how he arrived at that figure.

John Chaponis, who has been the Colchester Assessor for 27 years, testified that septic systems generally last thirty to forty years. It appears that the septic system and well water system for the Property had lasted far in excess of that period.

There was no rational reason for deducting the entire cost of the well and septic repairs in 2016. There was no evidence that any repairs were done in that year. There was evidence that repairs had been needed at the time GAIA purchased the Property. So why not deduct the entire amount in 2010 or 2011, or any year other than the reevaluation year?

"The annual replacement allowance for each component of a property is usually estimated as the anticipated cost of its replacement prorated over its total useful life." The Appraisal of Real Estate (12th Ed. 2001) p. 519. Mr. Chaponis testified that the useful life of a septic system was thirty to forty years. The useful life of the actual septic system on the Property was closer to fifty years. Had Mr. Isaacson deducted one thirtieth of the "deferred maintenance" costs from his "indicated values," his fair market value would have been more reasonable. Deducting the entire amount in the reevaluation year was unreasonable, irrational and, apparently, calculated to produce as low a value as possible.

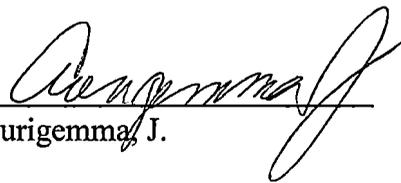
The plaintiff's valuation is further contradicted by evidence in the record. GAIA purchased the Property for \$5,400,000 in August of 2010. At that time the Lennard Report of 4/16/2010, used by Mr. Isaacson as a basis for his deferred maintenance costs, existed. From the foregoing one can conclude that even though GAIA was aware of the cost to repair or replace the septic system, it paid \$5,400,000 for the Property. Mr. Isaacson testified that property values in the Colchester area had risen by approximately 3% per year. Assuming that is correct, then the value of the Property as of 2016 would have been \$6,445,563, a number closer to the assessor's \$5,814,300.00 fair market value than that of the plaintiff.

In addition, the financial statements of GAIA in evidence reflect that GAIA obtained an appraisal of the fair market value of the Property as of 12/31/2016 which was \$5,950,000. Again, this value is far closer to Colchester's fair market value.

It is a basic principle of law governing tax appeals that it is the burden of the taxpayer to show that he or she has been aggrieved by the action of the assessor over-assessing the property. *Ireland v. Wethersfield*, 242 Conn. 550, 556, 698 A.2d 888 (1997). It is also recognized by our case

law that where the trial court finds that the taxpayer's appraiser is unpersuasive, judgment may be entered in favor of the municipality on this basis alone. *Id.*, at 557-58. See also *Nutmeg Housing Development Corporation v. Town of Colchester*, 324 Conn. 1, 151 A.3d 358(2016). For the foregoing reasons, the court finds that taxpayer's appraiser unpersuasive and the taxpayer has not established aggrievement and enters judgment in favor of the defendant.

By the court


Aurigemma J.