

DOCKET NO. HHB-CV-18-6046ff? *02* 2022 SUPERIOR COURT  
MACY'S RETAIL HOLDINGS, INC. : JUDICIAL DISTRICT  
INSTANT CLERK : OF NEW BRITAIN  
VS. : TAX APPEALS.

CITY OF DANBURY MARCH 2, 2022

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is a property tax appeal challenging the October 1, 2017 tax assessment of property, owned by Macy's Retail Holdings, Inc. (plaintiff), located at 7 Backus Avenue in Danbury by the City of Danbury (defendant). The effective complaint is an amended complaint dated September 29, 2021, asserting eight counts challenging the defendant's assessment of the foregoing property pursuant to General Statutes §§ 12-117a and 12-119 on the grand lists for October 1, 2017 through October 1, 2020. The court held a trial on December 2, 2021.

*Electronic Notice sent to all counsel of record  
and to the official reporter. A. J. Andropoulos 3/2/22*

**FINDINGS OF FACT:**

Based upon the evidence introduced at trial, the court makes the following findings of fact:

1. At all times relevant to this appeal, the plaintiff<sup>1</sup> owned the property located at 7 Backus Avenue in Danbury (property ID 12930), which property included real estate and improvements thereon (Property).
2. As of October 1, 2017 (Assessment Date), the defendant assessed the full fair market value of the Property as \$17,206,800 with \$10,953,600 attributed to the land and \$6,253,200 attributed to the improvements thereon.
3. The plaintiff timely appealed the defendant's October 1, 2017 assessment to the Board of Assessment Appeals. The board denied the plaintiff's appeal, and the plaintiff timely appealed the board's denial to this court. The plaintiff subsequently amended its complaint to include the 2018, 2019, and 2020 grand lists.<sup>2</sup>
4. The defendant's expert, Mark Kenney, determined that the full fair market value of the Property as of the Assessment Date was \$19 million.

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<sup>1</sup> The plaintiff is the successor in interest of Macy's East Inc. in its ownership of the Property.

<sup>2</sup> The full fair market value assessments of the Property on the grand lists for 2018, 2019, and 2020 were each \$17,497,900.

5. The plaintiff's expert, Donald Bouchard, determined that the full fair market value of the Property as of the Assessment Date was \$11,500,000.
6. The Property comprises a three-level owner occupied department store building attached to a regional shopping mall within the A class category with a gross building area of 240,413 square feet. See defendant's exhibit A, page 7.
7. The Property comprises 14.33 acres of real property. See defendant's exhibit A, page 7.
8. The plaintiff opened its operations on the Property in 1987. See defendant's exhibit A, page 7.
9. The plaintiff's operation is an anchor department store in the mall to which it is attached. See defendant's exhibit A, page 8.
10. Malls and anchor department stores have faced substantial economic pressure over the last 18 years. See plaintiff's exhibit 1, page 4.
11. Mall anchor stores generally pay the lowest rent per square foot as compared to smaller locations within the same mall. See plaintiff's exhibit 1, page 4.
12. The Property is located in Fairfield County near the border with New York, and is in an excellent location for retail use. See defendant's exhibit A, page 46.
13. The mall to which the Property is attached comprises 435,865 square feet of retail space and was 88.3 percent occupied on the Assessment Date. See defendant's exhibit A, page 75.

14. The improvements on the Property were built in 1987 and the overall condition is good.  
See defendant's exhibit A, page 76.
15. The mall to which the Property is attached competes with other regional malls in the area.  
See defendant's exhibit A, page 103-104.
16. Malls, and "brick and mortar" retail stores, have experienced increased competition from online sales in recent years. This competition is accelerating, and certainly should be taken into account when valuing a retail department store property during this period. Department store retailers were also experiencing financial stress during this period. See plaintiff's exhibit 1, page 35.
17. Retail sales at the Property have decreased from \$208 per square foot in October 2015, to \$191 per square foot in October 2016, to \$188 per square foot in October 2017. See defendant's exhibit A, page 111. This sales decrease trend has continued. See plaintiff's exhibit 1, page 65.
18. This anchor department store is relatively large, and that size will likely pose an impediment in marketing the Property as a single department store, which the building is currently designed for. If the plaintiff were to cease its operations on this site, the Property would likely need to be re-developed for an alternate purpose. A likely re-development would be to repurpose the Property to contain several smaller retail stores and/or restaurants.

19. The most appropriate method for valuing this property is the income capitalization method.<sup>3</sup> See plaintiff s exhibit 1, page 101.
20. Neither expert found that the cost approach was an appropriate valuation method in this case, and the court agrees.
21. The court did not credit the defendant expert's sales comparison valuation analysis for several reasons.<sup>4</sup>
22. The Property is currently being used in its highest and best use as an anchor store attached to a mall. See plaintiff s exhibit 1, page 57.

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<sup>3</sup> Although the Property is owner occupied, the use of the income method for valuation is valid. The accuracy of the income valuation method in this application requires careful attention to a determination of market rent and to an appropriate estimation of expenses, since actual rents are not being earned nor are some actual expenses being incurred. It should be noted that both experts and the defendant's revaluation company used the income valuation method in determining a value for this Property. The use of the income valuation methodology on an owner-occupied property is not inconsistent with § 12-63b(b), which only requires consideration of an actual rent if in fact an actual rent exists for the property. Obviously, there are many situations where an actual rent does not exist such as when a property is newly built and has not been rented yet, when an existing property is vacant and has not currently been rented, or in a case such as this where the property is owner-occupied.

<sup>4</sup> The defendant's expert relied on sale-leaseback transactions which the court found to be unreliable comparisons to market reality. The majority of the defendant expert's sale comparisons were comprised of sale-leaseback transactions from a very large bulk transaction executed between Sears and a real estate investment firm formed by Sears. The defendant's expert testified that he was unaware whether the comparative sales he used had been appropriately exposed to the open market. Many of the lease portions of the sale-leaseback transactions contained unusual claw-back provisions. The Sears transactions were executed at a time when Sears was in financial difficulty. In general, sale-leaseback transactions are primarily financing vehicles and often do not provide a reliable indication of market rent. When considering sale-leaseback transactions particular consideration must be given to the interrelated sale and leaseback terms to fully understand the transaction, the consideration paid, and rent being charged because many terms within the transaction may provide consideration and the consideration paid and rent charged may be interrelated. The plaintiff s expert did not conduct a sales comparison valuation because of the lack of good comparable data. Christopher Kerin also testified as to a lack of good comparable sales data.

23. The triple net market rent for the Property is \$6 per square foot<sup>5</sup> of gross area,<sup>6</sup> yielding a gross income for the Property of \$1,440,000 per year.
24. An appropriate vacancy and collection allowance is 5 percent of rent, which in this case is \$72,000. See plaintiff's exhibit 1, page 96.<sup>7</sup>
25. Operating expenses for the Property are \$159,900 per year. See plaintiff's exhibit 1, page 96.<sup>8</sup>
26. The net operating income that is expected from the Property is \$1,208,100 per year.<sup>9</sup>
27. The appropriate capitalization rate for the Property is 7.9 percent.<sup>10</sup>

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<sup>5</sup> Based upon the evidence, the court finds that the market rent for the real estate is \$6.00 per square foot. The foregoing market rent equates to the average of the plaintiff expert's market rent at \$5 per square foot and the defendant expert's market rent at \$7 per square foot. The court's finding of market rent is also supported by the market rent applied by the defendant in its revaluation process at \$6 per square foot. See defendant's exhibit C. The rents are all triple net.

<sup>6</sup> The court found that the applicable building area was 240,413 square feet which the court rounded to 240,000 square feet. This is supported by the plaintiff's expert report and the defendant's exhibits B and C. The court did not accept the defendant expert's finding of 218,213 square feet of gross leasable area.

<sup>7</sup> The defendant's expert also used 5 percent of rent as the appropriate vacancy and collection allowance.

<sup>8</sup> The defendant's expert estimated expenses at \$138,129 per year, which is not significantly different from the plaintiff expert's estimated expenses.

<sup>9</sup> The court notes that Mr. Kerin's NOI was \$1,144,309; Mr. Bouchard's NOI was \$980,100; and Mr. Kenney's NOI was \$1,312,988. Accordingly, the court's determination of NOI falls within the range of NOI determined by the various experts.

<sup>10</sup> The court determined that the appropriate capitalization rate was 7.9 percent. This equated to the rounded average of the plaintiff expert's capitalization rate of 8.5 percent and the defendant expert's capitalization rate of 7.2 percent. It is noted that the defendant expert's capitalization rate of 7.2 percent was not derived from the comparative sales

28. The income capitalization approach yields a value of \$15,292,405, which the court rounds to \$15,300,000.<sup>11</sup>

29. The foregoing valuation applies to the periods for the appealed grand lists of 2017, 2018, 2019, and 2020.<sup>12</sup>

**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

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that he had used in other ways. Instead, the 7.2 percent was derived from applicable mortgage and equity rates of return. See defendant's exhibit A, page 116 (107 of the report).

<sup>11</sup> The court notes that the effective valuation of this Property as of October 1, 2012, was \$15,548,400. Although the overall real estate market improved from 2012 to 2017, the plaintiff's sales at this Property dropped. Further, as noted in the findings of fact, large anchor department stores attached to malls experienced significantly increasing competition from online sales. Although redevelopment of the site is possible, its attachment to a mall limits the possibilities and any redevelopment would obviously require investment. Lastly, both experts found that the current highest and best use was its current use as a mall anchor store. The court found it not credible that the value of this Property, in its current highest and best use as a mall anchor department store, increased in value over the appealed period.

<sup>12</sup> No substantial credible evidence was offered on either side that would support any change in valuation from the valuation found as of October 1, 2017, during the subsequent periods appealed. Although defendant's exhibit B indicates the cost of certain improvements after October 1, 2017, no substantial credible evidence was offered tying those improvements to a subsequent change in value of the Property. Care must be taken not to confuse or inappropriately combine the income and cost valuation approaches, particularly without necessary support and logic.

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:**

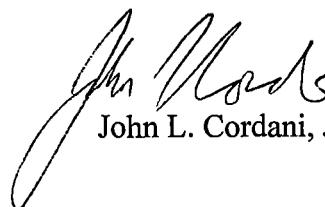
In view of the court's findings of fact, the court finds that the plaintiff has met its burden regarding aggrievement, is aggrieved, and the defendant's tax assessment is excessive. However, the court does not conclude that the assessment was manifestly excessive and could not have

been arrived at except by disregarding the provisions of the statutes applicable to determining valuation. The court finds that the assessment merely arose from good faith differences of opinion concerning the parameters of valuation. Accordingly, the court will enter judgment for the plaintiff on the counts that assert claims pursuant to § 12-117a, namely counts one, three, five, and seven, but for the defendant on the counts that assert claims pursuant to § 12-119, namely counts two, four, six, and eight.

The court has determined that the income capitalization approach is the most appropriate valuation method for this Property. The court has further determined that the appropriate full market value for the Property for the periods of time appealed is \$15,300,000.

**JUDGMENT:**

The court enters judgment for the plaintiff on counts one, three, five, and seven. The court enters judgment for the defendant on counts two, four, six, and eight. The court sets the full market value of the Property at \$15,300,000 for the periods of the appealed grand lists for 2017, 2018, 2019, and 2020. Thus, taxes for the appealed periods must be determined based upon a full market valuation of \$15,300,000.

  
John L. Cordani, Judge