

DOCKET NO. HHB-CV-19-6052172

SUPERIOR COURT

WAL-MART REAL ESTATE BUSINESS TRUST

JUDICIAL DISTRICT OF NEW BRITAIN

VS.

ADMINISTRATIVE AND TAX APPEALS

TOWN OF ROCKY HILL

AUGUST 22, 2022

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is a real property tax appeal by Wal-Mart Real Estate (the plaintiff) concerning the valuation and taxation by the Town of Rocky Hill (the defendant) of real property and improvements thereon located at 80 Town Line Road (Map ID: 713; Alternate ID: 04-556) as of October 1, 2018. The court held a trial on August 15 and 16, 2022.

FINDING OF FACT:

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

1. The property at issue is that real property, and the improvements thereon, located at 80 Town Line Road (Map ID: 713; Alternate ID: 04-556) (Property).

*Notice sent to attorneys of record,  
sent to official court reporter.  
A. Jordanopoulos, 8/22/22*

2. At all times relevant to this appeal, the plaintiff owned the Property and had the responsibility of paying the taxes assessed thereon.
3. As of October 1, 2018 (Valuation Date), the defendant valued the Property at \$14,409,400 for the 2018 through 2020 grand lists and assessed taxes based upon seventy percent of the foregoing valuation and the applicable mil rate. The defendant valued the Property at \$15,806,200 for the 2021 grand list and assessed taxes based upon seventy percent of the foregoing valuation and the applicable mil rate.<sup>1</sup>
4. The plaintiff timely appealed the 2018 grand list valuation and taxation to the Board of Assessment Appeals, but the board made no change.<sup>2</sup> The plaintiff then appealed to this court.
5. The plaintiff's expert, Gregory Curtis, produced a report and testified that he used the sales comparison and income valuation approaches, and he valued the Property, as of the Valuation Date, at \$6,210,00 for the 2018 through 2021 grand lists.

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<sup>1</sup> At trial, the defendant admitted that the value of \$15,806,200 on the 2021 grand list was an error and represented that the value on the 2021 grand list should have been \$14,409,400. The assessor intends to make the foregoing change through a certificate of correction.

<sup>2</sup> The plaintiff's estimate of market value in its appeal to the Board of Assessment Appeals was \$6.9 million.

6. The defendant's expert, Christopher Kerin, has produced a report and testified that, he used the sales comparison and income valuation approaches, and he valued the Property as of the Valuation Date at \$13,400,000 for the 2018 through 2021 grand lists.
7. The highest and best use of the Property, as improved, is as a big box retail store.<sup>3</sup>
8. The Property comprises 10.89 acres with a 99,034 square foot<sup>4</sup> big box retail store. The store operates as a typical Walmart store.
9. The building on the Property was initially constructed in 1970 but was renovated on the interior in 2015. The 2015 renovations were primarily minor interior cosmetic renovations.<sup>5</sup> As of the Valuation Date, the building was in average condition and generally maintained.
10. The Property was purchased by the plaintiff in 1999 for approximately \$8.2 million. The plaintiff renovated the building for its use in 1999 and again in 2015.

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<sup>3</sup> As vacant, the highest and best use would be general retail.

<sup>4</sup> Neither expert included the garden center in the overall building square feet, primarily because the garden center was not heated or cooled and was not constructed or finished in the same manner as the main part of the building. Accordingly, the functionality of the garden center was limited, and it would appeal to only a small class of purchasers or users. The garden center comprised 9,720 square feet.

<sup>5</sup> See Plaintiff's Exhibit 1, p. 2.

11. The Property is located adjacent to Interstate 91, just south of Hartford. The Property has limited visibility from Interstate 91. The Property is part of a larger shopping center shared primarily with a Stop & Shop. The location of the Property is a good location for a big box retail operation.
12. The improvements are of average quality construction and are in average condition.
13. The court did not credit or accept the sales comparison analysis of either expert. Neither expert adequately or convincingly justified the sales comparisons that they used. Kerin's sales comparison analysis required very large adjustments which the court believed undermined the analysis.<sup>6</sup> Curtis' analysis did not adequately support and deal with differences in the markets between the subject Property and his comparisons. The court also notes that in his reconciliation of value, Curtis used the valuation he achieved with his income valuation approach and did not give any weight to his sales comparison valuation. See Plaintiff's Exhibit 1, p. 66.
14. The court found that the income valuation approach was the appropriate and most accurate method of valuing this Property.

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<sup>6</sup> Kerin's first comparable was the sale of property with a long-term land lease on it, which ultimately required exceedingly high adjustments. Kerin's second comparable also required very high adjustments.

15. The court found that the market rent for the Property as of the Valuation Date was \$8.43 per square foot.<sup>7</sup> Given the building's 99,034 square feet, this yields a gross income of \$834,857.

16. From the gross income, the court found that it should deduct the following expenses: (i) vacancy and collection loss at 5%<sup>8</sup> (\$41,743), (ii) replacement reserves at \$0.25 per square foot<sup>9</sup> (\$24,758), and (iii) management expense at 3%<sup>10</sup> (\$25,046). This yielded a net operating income of \$743,310.

17. The court found that the capitalization rate should be 7.5%.<sup>11</sup>

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<sup>7</sup> This was the average market rent found by Kerin in this market as of the Valuation Date for a property such as the Property at issue here. See Defendant's Exhibit A, p. 72. In his income valuation analysis, Kerin had chosen \$9.00 per square foot which was essentially the upper end of the market rent range found by Kerin. Curtis found that the market rent was \$6.25 per square foot.

<sup>8</sup> This is the average between the 3% vacancy and collection expense found by Kerin; see Defendant's Exhibit A, p. 73; and the 7% vacancy and collection expense found by Curtis. See Plaintiff's Exhibit 1, p. 57.

<sup>9</sup> This is the replacement reserve found by Curtis. See Plaintiff's Exhibit 1, p. 58. Kerin did not use a replacement reserve, but the court found this position to be unsupported. Even with a triple net lease, the basic structure of the building, including the roof, typically remains the landlord's responsibility. Including a reasonable cost for the depreciation and expected replacement of structural elements is a normal and expected expense to plan for, particularly with a building which was about 48 years old on the Valuation Date, having been constructed in 1970.

<sup>10</sup> Both experts agreed that the appropriate management expense was 3%. See Plaintiff's Exhibit 1, p. 58; Defendant's Exhibit A, p. 74.

<sup>11</sup> The court chose a capitalization rate that was between Kerin's capitalization rate at 7%; see Defendant's Exhibit A, p. 76; and Curtis' capitalization rate at 8.5%. See Plaintiff's Exhibit 1, p. 64.

18. The court found that the proper valuation of the Property as of the Valuation Date was \$9,910,800, which the court rounds to \$10 million.<sup>12</sup>

**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

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<sup>12</sup> The court noted that Kerin's income valuation analysis yielded a value of \$11,980,000. and Curtis's income valuation analysis yielded a valuation of \$6,210,000.

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 complaint is an eight-count complaint challenging the valuation and taxation of the Property on the defendant's 2018 through 2021 grand lists. Counts one, three, five and seven assert claims pursuant to § 12-117a for the 2018, 2019, 2020 and 2021 grand lists, respectively. Counts two, four, six and eight assert claims pursuant to § 12-119 for the 2018, 2019, 2020 and 2021 grand lists, respectively. The plaintiff is aggrieved because the fair market valuation of the Property as determined by the defendant materially exceeds the actual value of the Property as of the Valuation Date and on each respective grand list. In this regard, even the defendant's expert determined that the value of the Property was materially lower than the defendant's valuation on each grand list at issue. Accordingly, the plaintiff is aggrieved.

In view of the factual findings made by the court, the court has determined that the defendant over-valued the Property on the 2018 through 2021 grand lists. Accordingly, the plaintiff has met its burden of proof on the claims asserted through § 12-117a, namely counts one, three, five and seven. However, the court finds that the over-valuation of the Property arose from honest differences of opinion, not from a disregard of applicable statutes, and further that

the over-valuation is not manifest. Accordingly, the court finds that the plaintiff has not met its burden of proof on claims asserted through § 12-119, namely counts two, four, six and eight.

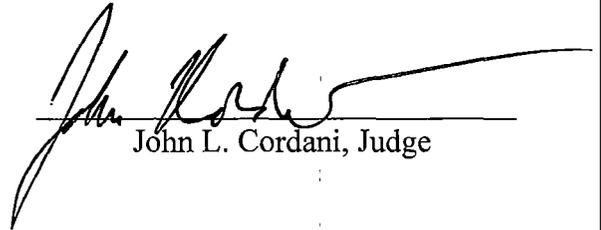
The court found that the proper full market valuation of the Property as of the Valuation Date, and for each of the grand lists challenged, was \$10 million. The court achieved this valuation using the income valuation approach with parameters that are between the parameters used by each of experts in their income valuation approaches. In doing so, 'the court gave some credit to each of the experts' findings on market rent, expenses and capitalization rate, but found that the most appropriate and accurate parameters existed as a compromise between the parameters used by each expert. Accordingly, the valuation arrived at by the court was an amount between the values arrived at by each expert.

The court gave no weight to the experts' sales comparison valuation analyses, having found irreconcilable difficulties with both analyses. Because the court did not credit either of the sales comparison approaches, the parties' arguments concerning "dark store theory" were neutralized since the foregoing theory, if utilized, only potentially impacted sales comparison analyses. However, the court's choice not to credit either sales comparison analysis had nothing to do with the foregoing theory, but instead arose, as noted in the findings,' from direct deficiencies in the chosen comparisons and the analysis thereof.

**JUDGMENT:**

Judgment enters for the defendant on counts two, four, six and eight.

Judgment enters for the plaintiff on counts one, three, five and seven. The full market valuation of the Property on the 2018, 2019, 2020 and 2021 grands lists should be \$10 million, and the Property should be assessed and taxed accordingly. The court declines to grant interest and costs.



John L. Cordani, Judge