NO. CV 01 050 82 77S	:	SUPERIOR COURT
JANICE B. PARROTTA	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
TOWN OF NEWINGTON	:	JULY 8, 2004

MEMORANDUM OF DECISION

This action is a real estate tax appeal brought by the plaintiff, Janice B. Parrotta, contesting the town of Newington's valuation of her property located at 60 Prospect Street, Newington as of the last revaluation year of October 1, 2000. On that date the Newington assessor determined that the fair market value of the subject property was $1,634,971.

The subject property, known as the Newington Tennis Center, consists of a 3.28 acre parcel of land located on the east side of Prospect Street on the Newington/Wethersfield town line. The site is encumbered with a utility and drainage easement that does not have an impact on its use. The property is also located in a "Business Berlin Turnpike Zone." On October 1, 2000, the subject property was a nonconforming use. However, effective December 1, 2001, recreational uses such as health clubs, bowling alleys, amusement enterprises and tennis clubs became a permitted use by special exception. The site is also improved with 23,500 square feet of paved parking with asphalt curbs, concrete service walks, catch basin drainage and stanchion lighting.

In 1972, the site was improved with the construction of a special purpose building designed for use as a tennis club. The metal building contains 45,000 square feet of gross building area with sidewalls at a height of 14 feet and a roof peak of 28 feet. The main part of the building contains six tennis courts and is several feet below the grade level of the parking lot. The floor under the six tennis courts was built without a concrete slab. The women's locker room has fifty lockers, three toilets, two sinks, private showers, a sauna, and a make up area. The floor covering in the women's locker room is carpeted, except for the shower and rest area, which has tile covering. The men's locker room has 138 lockers, is carpeted, with the rest rooms having both tile floors and walls in the shower area. The men's locker room also contains seven gang style showers, three sinks, two urinals, two commodes, a drying area and a sauna. There is a kitchen facility overlooking the tennis courts that serves light food and drinks and contains tables and chairs for people to sit and watch those playing tennis.

The six tennis courts, which are in very good playing condition, are constructed with a latex-ite surface. Latex-ite is recognized for its durability and for its high quality playing surface. The courts are standard dimensions and there is adequate space between and above them. There is no air conditioning in the building, and therefore, the tennis courts are closed during the months of June, July and August.

Both appraisers, Miles B. Andrews (Andrews) for the plaintiff and Robert J. Mulready (Mulready) for the defendant, determined that the highest and best use of the subject property was its continued use as a tennis center. We agree. The subject, as we have previously noted, was constructed as a tennis facility in 1972 and has been operated as such to the present time.

Andrews, using all three approaches to value: cost, income and market sales, determined that the fair market value of the subject property as of October 1, 2000 was $900,000. Mulready, on the other hand, using only the cost and income approach, valued the subject property, as of October 1, 2000, at $1,674,000.

Recognizing as we have that the highest and best use of the subject is for its continued use as an indoor tennis facility, it is helpful for us to examine the history and market for indoor tennis facilities. Andrews provided such a history in his appraisal report. For the most part, indoor tennis facilities were built in the 1960's through the mid 1970's and typically housed three to six courts. The tennis facilities were generally light duty, pre-engineered clear span metal building shells of the type used for low cost industrial development. After the mid 1970's interest in tennis facilities fell and continued to wane through the 1980's and 1990's. (Plaintiff’s Exhibit 1, p. 4.)

Both Andrews and Mulready used the cost approach to arrive at fair market value of the subject. Each used the Marshall Valuation Service to determine the replacement cost new of the subject and then determined a depreciation factor to use on this twenty-eight year old building. Mulready determined the final square foot replacement cost of the building to be $40.93 with a depreciation factor of 39 percent to arrive at a total value including land of $1,672,548. Andrews determined the total replacement cost per square foot of building area to be $45.17 with a depreciation factor of 73.9 percent to arrive at an $890,000 valuation of the subject.

Given our finding that the subject building is a light duty clear span metal building shell housing six tennis courts with an asphalt floor and an age of approximately twenty-eight years, and considering the 35 percent discrepancy between the depreciation factors used by the appraisers, we conclude that the cost approach is not a credible method to use in this case to determine the fair market value of the subject. The value is in the use of the building as a tennis center, not the depreciated value of an old shell of a building.

We now turn to the market sales approach. We find the market sales approach, as used by Andrews, to lack credibility. We agree with Mulready's opinion that there is a lack of availability of comparable sales. Andrews selection of sales consisted of a volleyball center sold to its tenant with concessions, a sports center sold to its tenant, and a health club sold with a partial leaseback. None of the three sales selected give us any confidence that they represent fair comparables to the subject.

We are left with the income approach used by both Andrews and Mulready in their determination of value of the subject. Both Mulready and Andrews disregarded the rental paid by the existing tenant. Andrews ignored the contract rent of the subject because he concluded that the tenant was an "affiliate of the owner, and there is not an arms length lease to consider as an indication of the rental value of the subject." (Plaintiff's Exhibit 1, p. 17.) Mulready makes no mention of a contract rent, probably for the same reason that Andrews did not consider the lease. However, it is important to note that General Statutes § 12-63b, valuation of rental income real property, requires an assessor, and therefore an appraiser, to consider the actual rental income derived from an existing lease of the subject, as well as market rent, in determining the value of the subject. See First Bethel Associates v. Bethel, 231 Conn. 731, 742-43 n. 8, 651 A.2d 1279 (1995). The only information that we have about contract rent comes from Andrews. In his appraisal report, Andrews recites: "A lease dated September 1, 1998 was executed between the Tennis Center [o]f Newington/Wethersfield, Inc. and the A. P. Parrotta Management. The tenant and the landlord are related parties. The property is not subject to an arms length lease. The rent under the terms of the lease was $4.00 per [square foot], which is approximately $0.50 per [square foot] higher than the market rental value of the property. The lease term was for one year, and the manager of the facility, Peter Parrotta, stated that the terms of this lease have been adhered to since the lease expired in 1999." (Plaintiff's Exhibit 1, p.1.)

In view of the fact that § 12-63b requires an assessor to consider both contract rent and market rent, it is important for us to consider the lease of the subject property even though it was between related parties. The fact that the lease was between related parties does not automatically disqualify it from being considered. Certainly, the knowledge that the lease was between related parties raises the question whether the transaction had the indicia of fairness or elements of an arms length transaction. In this regard, the subject lease requires an examination of its terms to determine the credibility that we can attach to the transaction. In this case, the rent was set at $4.00 per square foot. No other information was provided by Andrews. We can assume that the lease was for the whole 45,000 square feet of gross building area, which would include the six tennis courts, locker rooms, office and lounge. We know that the lease was for one year and although not renewed, the tenant has remained in possession under the same terms of the lease.

Andrews, in considering the market rent for the subject, looked at four leases.

The first lease was the Canton Racquet Club at 310 Albany Avenue, Canton. This property had six indoor tennis courts and two outdoor tennis courts, men's and ladies locker rooms, a fitness area and a lounge. Andrews concluded that the "market rental value for the subject on a Modified Gross basis where the lessor pays property taxes only is $3.91 per [square foot]." (Plaintiff's Exhibit 1, opposite p. 17.) The remaining three leases Andrews selected for market rental values are not tennis facilities, but rather, they are fitness clubs. One is located in the Manchester Parkade, a 263,400 square foot strip mall. The second is located in East Granby in a converted section of a masonry retail strip center. The third is a metal building located in Simsbury. In our view, the three fitness club leases are not comparable to the subject tennis center in Newington.

Turning to Mulready's selection of market rentals to support his analysis of fair market value using the income approach, we find an inconsistency between his determination of highest and best use of the subject for its continued use as a tennis facility, with his selection of leases of property for light industrial use. We understand Mulready's opinion that an industrial type building may have similar costs compared to a tennis type building, however, when we look at the photographs of the subject in both Andrews' and Mulready's appraisal reports and review the data attached to the subject, we see little reason to consider these selections as comparables for the purpose of determining the value of the subject. For these reasons, the only comparable in the market that we view as credible is the tennis facility in Canton reported by Andrews.

We next consider the contract rent of the subject even though it was between related parties. Simply because the subject lease was between related parties, does not automatically exclude the lease from consideration. See The Appraisal of Real Estate (10th Ed. 1992) p. 380-81. From the standpoint of the appraiser, the question is whether the terms of the lease between related parties are consistent with terms existing in the market between an unrelated willing lessor and a willing lessee. Considering the $3.91 rent per square foot for the Canton tennis facility and the $4.00 per square foot for the subject, we conclude, under the income approach, that the potential gross income (PGI) for the subject, as of October 1, 2000, was $4.00 per square foot of gross building area, which in this case is 45,000 square feet. This gives us a potential gross income of $180,000.

Since Andrews and Mulready were close in their selection of a vacancy and collection loss factor, we consider a general allowance for vacancy and collection of 6 percent of the PGI, or a dollar loss of $10,800. This gives us an effective gross income (EGI) of $169,200. We also note that Andrews was in possession of operating expense data for a three year period of the subject and was, therefore, in a good position to estimate the operating expenses for a tennis facility similar to the subject. Using this information, Andrews arrived at an operating expense, excluding property taxes, but including a 4 percent annual reserve for capital replacements, for a total of $27,570. Although Andrews reached his operating expense of $27,570 by using an expense ratio of 18.6 percent of his EGI, we consider $27,570 to be an adequate market representation of the operating expenses for the subject despite our finding of an EGI of $169,200, compared to Andrews $148,050. Taking our EGI of $169,200 and deducting the operating expenses of $27,570, we arrive at a net operating income of $141,630.

Andrews determined the capitalization rate for the income approach to be 13.5 percent. He based this on a capitalization rate before taxes of 11.5 percent and an added tax load of 2 percent. Mulready, on the other hand, selected a capitalization rate of 10.5 percent from a range of 8.75 percent to 12 percent. No tax load was used by Mulready because of his selection of triple net leases in which the tenant pays the real estate taxes. After considering the basis for the selection of the capitalization rate by both Andrews and Mulready, we conclude that an 11.5 percent capitalization rate, tax included, is the more credible rate to use in this case.

Taking the net operating expense of $141,630 and using a capitalization rate of 11.5 percent, we arrive at a fair market value of $1,231,565 for the subject property as of October 1, 2000.

Accordingly, since our finding of fair market value of the subject, as of October 1, 2000, is below the value determined by the defendant's assessor, judgment may enter in favor of the plaintiff sustaining this appeal without costs to either party.

Arnold W. Aronson
Judge Trial Referee