NO. CV02 0392891S	:	SUPERIOR COURT
GENERAL ELECTRIC COMPANY AND GENERAL ELECTRIC PROPERTY MANAGEMENT COMPANY	:	JUDICIAL DISTRICT OF
	:	FAIRFIELD AT BRIDGEPORT
v.		
TOWN OF FAIRFIELD	:	JULY 22, 2005

MEMORANDUM OF DECISION

This action is a real estate tax appeal brought by General Electric Company and General Electric Property Management Company challenging the valuation placed upon its property located at 3135 Easton Turnpike in the town of Fairfield for the revaluation year of October 1, 2001. This appeal covers the assessment years of October 1, 2001 through October 1, 2004. Since this appeal was taken, the plaintiff General Electric Property Management Company's interest in the property was transferred to National Broadcasting Company Holding, Inc., which, as the present plaintiff in this action, together with General Electric Company, will be collectively referred to as "GE."

The subject property, consisting of 68.79 acres of land, is the national headquarters of GE. It is located on a hillside just southwest of the Merritt Parkway (CT Route 15) at exit 46. The property is improved with two, three-story buildings, known as the East Building and the West Building, which have served as the corporate headquarters since 1974. In 1984, a separate four-story building, known as the "Guest House," was constructed. The Guest House contains twenty-eight guest rooms, conference areas and dining facilities.

The East Building has an entry level comprised of a lobby, auditorium and mechanical areas. Above the entry level, there are three stories containing office space and conference areas. The boardroom and executive offices are located on the third floor. There is an atrium in the center of this building.

The West Building has two lower levels of garage parking. A medical center is located on the lowest parking level. There is a service level comprised of offices, an employee health and fitness facility, a production studio and mechanical areas. The three stories above the parking levels contain office space, a cafeteria, an employee store and conference areas. There are two atriums in the center of this building.

The East Building and the West Building are connected by below-grade service and parking levels. The two buildings contain 606,068 square feet of gross building area. There are a total of 752 parking spaces, consisting of 613 spaces in the garage, 57 spaces for visitor parking at the East Building and additional surface parking of 82 spaces at the West Building and the Guest House.

As of the revaluation year of October 1, 2001, Thomas F. Browne, Jr., the assessor for the town of Fairfield, determined that the subject property consisted of three separate buildings and valued each of the buildings as follows: the East Building, $28,100,100 (Plaintiff's Exhibit 3); the West Building, $47,970,200 (Plaintiff's Exhibit 4) and the Guest House, $10,355,600 (Plaintiff's Exhibit 5). The valuation of these buildings together with the land valued at $10,545,900 (Plaintiff's Exhibit 3), produced a total value of $96,971,800 for the entire subject. The town's appraiser, John J. Leary (Leary), determined that the fair market value of the subject property, as of the last revaluation date, was $97,500,000. GE's appraiser, Joseph P. Dondiego, Jr. (Dondiego), determined that the fair market value of the subject property as of October 1, 2001, was $68,500,000.

The subject property is located in a Designed Research District (DRD) zone.[1] Both appraisers considered that the subject property met the requirements of the DRD zone and concluded that the highest and best use of the subject property, as of October 1, 2001, was for the continuation of its current use as a single occupant office complex/corporate headquarters. (See Plaintiff's Exhibit 1, p. 18; Plaintiff's Exhibit 2, p. A-40.) On the issue of zoning, Leary considered the highest and best use of the Guest House to be independent of the headquarter buildings with a hypothetical use as a hotel. In Leary's opinion, the Guest House was physically a hotel although the subject property was not located in a zone permitting a hotel use. Dondiego, on the other hand, treated the Guest House as a functional part of the corporate headquarters used solely by GE for business meetings, conferences, etc. The Guest House was never used as a hotel open to the public; its sole use was to serve the needs of GE at its corporate headquarters.

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As stated in the Fairfield zoning regulations, special permit uses are:

> 22.2.2 office buildings and professional establishments, excluding those establishments which primarily provide services to customers and clients on the premises, provided that office buildings on land not in a Designed Research District prior to March 31, 1990, shall be used for single occupant use exclusively.

(Plaintiff's Exhibit 17, p. 62.)

Both Leary and Dondiego considered the income approach to value as a method to determine the fair market value of the subject property as of October 1, 2001. However, the income approach to value is predicated on the principle that the highest and best use of the subject property is for income production.

The present property has served as GE's headquarters for over thirty years. It, therefore, has never been used for income production. Leary recognized this fact when he concluded that the highest and best use of the subject was its continued use by GE as a corporate headquarters. In using the income approach, Leary incorrectly viewed GE as a tenant, not as an owner/occupant. Leary also concluded that the net rentable area of the subject was 513,861 square feet as compared to the 606,068 square feet of the gross building area.

Recognizing that the subject property was not income property, and therefore, did not have contract rent, Leary considered only economic rent in the market. However, the so-called comparable rents came from property that were not comparable in size to the subject. In addition, Leary considered the Guest House as a hotel and used other hotels as comparable. Leary failed to recognize that the zoning in effect on the date of revaluation did not permit the land to be used for a hotel. Leary was also aware that GE used the Guest House only for business purposes and not as a public hotel.

In conducting his income approach, Dondiego opined that the highest and best use of the subject was its current use "as a single occupant office complex." (Plaintiff's Exhibit 1, Summary of Salient Facts.) Dondiego also recognized that without a contract rent attributed to the subject, as owner/occupant, the market must be used in the determination of the economic rent of the subject. Dondiego was of the opinion that the demand for large office space was extremely limited, noting that, in his experience, there were only two leases of office space over 100,000 square feet per year.

Highest and best use has been defined as "the *use that will most likely produce the highest market value, greatest financial return, or the most profit from the use of a particular piece of real estate.*" United Technologies Corp. v. East Windsor, 262 Conn. 11, 25, 807 A.2d 955 (2002). (Emphasis in original; internal quotation marks omitted.) In determining the highest and best use in this case, the conflict between Leary's and Dondiego's opinions must be resolved. Leary proposed that the Guest House be treated as a hypothetical hotel while Dondiego proposed that the Guest House be incorporated into the valuation of the property as a whole.

The zoning regulations as of October 1, 2001, did not permit the use of the subject land as a hotel, nor was there any evidence in these proceedings that the zoning laws were in the process of being changed to allow this type of use. See Budney v. Ives, 156 Conn. 83, 88, 239 A.2d 482 (1968). It would be pure speculation to consider the present value of the Guest House as a hotel. See Robinson v. Westport, 222 Conn. 402, 409, 610 A.2d 611 (1992). On the contrary, GE used the Guest House strictly as a convenience for its officers, employees, vendors and contractors, not as a public hotel. In considering whether to treat the Guest House separately from the East and West Buildings in the valuation of the subject, it is appropriate to look at the facts as they presently exist. In this instance, GE did not treat the Guest House separate and apart from its operation of the whole property as a corporate headquarters. Instead, GE treated the Guest House as an integral part of the corporate headquarters operation. Where there is property, such as that here, containing multiple buildings with different functions, and the property as a whole is operated as a single unit (owner-occupied), its highest and best use should be that of a single unit of property. See Developers Diversified Ltd. v. Cuyahoga County, 84 Ohio St. 3d 32, 34, 701 N.E.2d 975 (1998).

When viewing the subject as a single unit, it becomes clear that on October 1, 2001, the highest and best use of the subject was as a single, owner-occupied corporate headquarters, not as income producing property. For example, the subject property contained 606,068 square feet of gross building area. In addition, it had a cafeteria, a health and fitness facility, an employee store, a parking garage as well as the Guest House. The corporate headquarters housed over 900 employees. GE expended substantial sums of money to maintain the physical plant. As Dondiego noted, there was a "paucity" of market transactions to conduct a credible study of market rents using the income approach. (Plaintiff's Exhibit 1, p. 38.) This paucity of good comparable rental property appeared in the selection of comparables under the income approach by Leary and Dondiego.

Leary's selection consisted of office rental properties ranging between 12,000 square feet and 17,000 square feet, compared to the subject at 606,068 square feet. Similarly, Dondiego used office rental properties from 47,000 square feet to 380,000 square feet at the PepsiCo property in Somers, New York. Dondiego noted that the PepsiCo lease involved a sale leaseback with a short four-year, eight month lease. (Plaintiff's Exhibit 1, p. 32, 37.) A sale leaseback for a term of less than five years casts doubt upon whether it was an arms-length transaction. See Plaintiff's Exhibit 1, p. 38 (that an initial period of rent would be based upon a ten-year period).

Turning to the sales approach, it is noted that Leary did not develop the market sales approach to value because, in his view, this approach is "fraught with potential error." (Plaintiff's Exhibit 2, p. 2.) On the other hand, Dondiego relied on four sales he considered as comparable to the subject in developing value using the sales comparison approach.

The first sale used by Dondiego was the former headquarters of PepsiCo situated on 206.12 acres of land at One Pepsi Way in Somers, New York. The office building was constructed in 1987 and contained 540,000 square feet of gross building area. Redux Realty, Inc. (PepsiCo) sold the property to the Witkoff Group, LLC, on August 31, 1998, for $67,000,000, or $124.07 per square feet of gross building area. This sale involved a sale leaseback at an annual rent of $7,000,000 for 4.67 years. Leary noted that this sale occurred in 1998 following a decline in the real estate market values in 1993, with rising prices through 2001. As a result, the adjusted square foot price of $124.07 that Dondiego calculated should reflect a 25.8 percent increase in value to $156.08 as of October 1, 2001. Leary's increase in value due to market conditions amounts to an annual increase of over eight percent, whereas Dondiego's increase in value was measured at an annual rate of three percent. If Dondiego's 9.8 percent increase for market conditions over a three-year period is factored, the adjusted square foot price of $124.07 would increase to $136.23.

The second sale used by Dondiego was the Greenwich American Centre, an office building at One American Lane, Greenwich, Connecticut. This property of 154.54 acres was improved with an office building in 1970 and contained 630,755 square feet of gross building area. The Centre, similar to the subject, contained a four-story main office building, a one-story executive wing and a guest residence of 11 rooms. This property sold on January 15, 1999 for $64,700,000. However, Dondiego noted that sale two, in addition to having multiple tenants instead of a single user, was property leased at below market rents at the time of the sale. (Plaintiff's Exhibit 1, p. 35.) Commenting on this sale, Leary noted that the property rights conveyed was a leased fee and that one half of the building was leased at below market rates.

The third sale used by Dondiego was the former corporate headquarters of GTE, located near the center of downtown Stamford, Connecticut, at 201 Tresser Boulevard. This property sits on 6.05 acres of land and contains a fourteen-story building constructed in 1973 with a gross building area of 496,126 square feet. Dondiego noted that this property was "[i]nitially sold to Zurich Reinsurance for occupancy as a headquarters. Upon changing plans, the property was acquired by Purdue Pharma who was relocating from Norwalk." (Plaintiff's Exhibit 1, Comparable Improved Sales.) This property sold on March 29, 1999, for $77,000,000. Leary noted that this sale was vacant at the time it was sold; that the property was purchased through a lease option and leased fee interest in land and the purchaser made substantial capital improvements to the property in the amount of $19,000,000 prior to occupancy. (Plaintiff's Exhibit 2, p. A-50.)

The fourth sale relied upon by Dondiego was the former Texaco Corporation headquarters located in Harrison, New York on 107 acres of land. The building was a 725,000 square foot, four-story office building constructed in 1977. At the time of sale on March 22, 2002, the property was in poor condition. The sale price for this property was $41,250,000. At the time of sale the building was vacant except for the lease of 120,000 square feet at below market rent.

The four sales selected by Dondiego to support his opinion on value of the subject, using the sales comparison approach, fail to engender any great confidence that they are comparable to the subject property. Although these sales are similar in size and use of the subject, the dissimilarities are significant. Multi-tenant use, large vacancies, sale leasebacks and below market rentals used in these selections do not indicate sales at fair market value.

On balance, the most credible approach to determine the fair market value of the subject property as of October 1, 2001, appears to be the cost approach. Use of the cost approach is most suitable here because GE has occupied the property for three decades as a single owner/occupant, during which time it made substantial improvements that upgraded the property and reduced obsolescence.

While Dondiego opined that the cost approach was the least desirable approach to use and noted that the condition of the subject improvements was "average," he did report that "[t]he building has been well-maintained and provides a good appearance relative to competing buildings within its submarket." (Plaintiff's Exhibit 1, p. 14.) Dondiego also noted the existence of a Heliport on the property.

Leary was more positive in his description of the buildings on the subject property. He stated that the buildings have carpeting as the primary floor covering, ceramic tile in lavatories and the kitchen-food service areas and parquet hardwood on the executive floor. Leary also stated that the ceilings contained decorative recessed panels and indirect fluorescent lighting. (Plaintiff's Exhibit 2, p. A-16.) Leary commented that "[t]he condition of the office improvements as of the effective date of appraisal is rated very good to excellent, reflecting the high quality of maintenance provided by the GE Facilities Department. An on-going modernization program has served to limit the impact of functional obsolescence by reducing effective age over time." (Plaintiff's Exhibit 2, p. A-16.) Leary further noted that the subject property was not an average corporate headquarters, but was in the best condition of all corporate headquarters that he has seen.

As to the Guest House, Leary commented that "[t]he condition of the guest house improvements as of the effective date of appraisal is rated very good to excellent, reflecting the high quality of maintenance provided by the GE Facilities Department." (Plaintiff's Exhibit 2, p. A-33.) Supporting Leary's comment on the condition of the subject buildings, the assessor testified that during its occupancy of the subject property, GE obtained seventy-two building permits totaling approximately $12,421,000 from November 1994 to the 2001 assessment and permits totaling approximately $6,500,000 for the period after the 2001 assessment to March 2004.

The use of the cost approach involves two components: 1) the value of the land as vacant and 2) the cost to construct the improvements, both at their highest and best use. See The Appraisal of Real Estate (12th Ed. 2001) p. 355. In this case, the improvements consist of the East Building, the West Building, the Guest House and site improvements to include parking.

The land component of the cost approach considers the estimated market value of the land which is then added to the depreciated cost of the improvements. Id., 356. In the present case, GE owns 68.79 acres of steeply sloping land in Fairfield. The property was formerly a quarry and fifty-six percent of it is encumbered with wetlands and wetlands setback areas.

In determining the market value of the subject 68.79 acres of land, Dondiego considered two sales. The first sale was land located on Glover Avenue in Norwalk, Connecticut, containing 7.28 acres. This land sold on February 15, 2001, for $13,500,000 or $1,854,396 per acre. Dondiego's second sale was a 24.67 acre parcel of land located at 20 Westport Road in Wilton, Connecticut, that sold on November 24, 1999, for $4,150,000, or $168,221 per acre.

Leary's site valuation, in developing the cost approach, was based on two sales. See Plaintiff's Exhibit 2, p. A-41. The first sale was 21 Black Rock Turnpike in Fairfield, Connecticut. This property, containing 28 acres of land, sold in January 2001 for $5,900,000, or $210,714 per acre. Leary indicated that the property had an abandoned industrial mill building that had to be demolished in order to build a railroad station and office park. He estimated the cost of demolition to be about $2,000,000, bringing the total potential land investment to $7,900,000, or $282,143 per acre. Leary's second sale was the former headquarters of Stauffer Chemical Company at Nyala Farms Office Park in Westport, Connecticut, located off exit 18 on Interstate 95. This property of 52.96 acres of land sold in December of 1998 for an allocated price of $15,000,000 for land only, since the purchase price for the former headquarters consisted of land and improvements.

It is difficult to attach much credibility to the sale of the former Stauffer Chemical Company property, for site value only, since the allocation of the purchase price of the land may depend upon factors other than that which exists between a willing seller and a willing buyer. For instance, land does not depreciate in value whereas improvements to land do. For tax purposes, it would be more advantageous for a buyer to allocate a higher value to the improvements. See, e.g., Dempze Cranberry Co. v. Biron Review Bd., 143 Wis. 2d 879, 422 N.W. 2d 902 (Ct. App. 1988).

Likewise, the property at 21 Black Rock Turnpike in Fairfield is difficult to analyze in terms of a willing buyer and seller. This difficulty arises because, before the sale, the property was improved with an old industrial mill that required demolition with the cost not then quantified.[2]

As discussed, Dondiego selected two sales as a basis for determining the site value of the subject. The first sale, the Norwalk parcel on Glover Avenue consisting of 7.28 acres of land, was part of an original 13.86 acres. The 7.28 acres were two building lots sold to a developer who had prior approval to build a 500,000 square foot building on the property. The developer was motivated to pay a higher amount for the property on the assurance that the square footage of the building could be increased. Five months after this sale, approval was granted to the developer to construct two buildings totaling 638,628 square feet.

The second sale, the Wilton parcel on 20 Westport Road, was vacant at the time of sale in 1999. However, the property was approved for the construction of two interconnected buildings totaling 335,000 square feet. With such undercurrents in both of Dondiego's sales, it is difficult to fathom the true motivating forces behind the buyers' and sellers' decisions in these transactions that relate to a fair market value for the subject.

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[2] The extraction method is a "method of estimating land value in which the depreciated cost of the improvements on the improved property is estimated and deducted from the total sale price to arrive at an estimated sale price for the land; most effective when the improvements contribute little to the total sale price of the property." The Appraisal of Real Estate (12th Ed. 2001) p. 335.

Recognizing that his conclusion of site value was based upon a floor area ratio (FAR),[3] Dondiego calculated as follows: 1) the square footage of buildings that could be built upon the sites of the two land sales equal to an FAR of $16 per square foot, 2) multiplied by the subject's gross building area of 606,068 square feet 3) to arrive at a fair market value of $9,697,088 rounded to $9,700,000.

Leary concluded that the site value of the subject property was between $200,000 and $250,000 per acre based upon his two selected sales. Leary, therefore, arrived at a rounded valuation range of $13,750,000 to $17,200,000. Leary equates this to between $22.69 and $28.38 per square foot of developed gross building area.

Neither Dondiego's nor Leary's opinion of site value generates any confidence that either forms a credible basis for the determination of the value of the land. As a general rule, in real estate tax appeal cases, the town has no burden to support the valuation determined by its assessor since it is the plaintiff's burden to show that the assessor's valuation was in error. See Ireland v. Wethersfield, 242 Conn. 550, 558, 698 A.2d 888 (1997). In this instance, the plaintiff has failed to sustain this burden as to the site value. Given the credibility problems that exist, as demonstrated in the court's analysis of the selected sales by both Dondiego and Leary, the 100 percent valuation placed upon the

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See Children's School, Inc. v. Zoning Board of Appeals, 66 Conn. App. 615, 622-23 n.2, 785 A.2d 607 (2001). "Floor Area Ratio" was defined in the Stamford zoning regulations as "the total gross floor area of all uses contained within buildings, including residential use and parking structures, divided by the area of the lot . . . ."

value of the land by the assessor at $10,545,900 must stand. Id., 561; see also Plaintiff's Exhibit 2, p. A-13; Plaintiff's Exhibit 21, p. 5.

Turning to the valuation of the improvements to the subject property, both appraisers used the replacement cost new[4] approach to value and relied on costs contained in Marshall Valuation Service, a nationally recognized publication containing construction costs for all types of improvements.

Leary, using Marshall Valuation Service, class A, good to excellent quality office for the East and West Buildings and class A, good quality hotel for the Guest House[5], in estimating the replacement cost new per square foot of gross building area, arrived at the following base unit costs: East Building, $133.23 per square foot; West Building, $133.23 per square foot and Guest House, $118.75 per square foot. Leary added adjustments for parking, sprinklers, story height, floor area/perimeter, current cost as of October 1, 2001, and local cost adjustment. As a result, Leary arrived at a rounded unit cost for the East Building of $170.00 per square foot; the West Building at $180.25 per square foot and the Guest House at $138.50 per square foot. Leary then multiplied these

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The cost approach to value is a "set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of, or replacement for, the existing structure plus any profit or incentive; deducting the depreciation from the total cost; and adding the estimated land value. . . ." The Appraisal of Real Estate (12th Ed. 2001) p. 349.

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Although the court disagrees with Leary's selection of hotel use as the highest and best use for the Guest House in his valuation process using the income and market sales approaches, there is a good deal of similarity between a hotel and the Guest House.

unit costs by the gross building area of the three buildings (182,717 x $170.00 = $31,061,890; 361,018 x $180.25 = $65,073,495; 62,333 x $138.50 = $8,633,121) to arrive at a total cost of replacement new of $104,768,506. To the value of the replacement cost new, Leary, as did Dondiego, added five percent for entrepreneurial profit and arrived at a final replacement cost new, plus profit, of $110,006,930. Dondiego, using Marshall Valuation Service, class A good, for the two office buildings and the Guest House as a hotel, arrived at a total replacement cost new of $122,005,239. (Plaintiff's Exhibit 1, p. 29.)

Reviewing the process that both appraisers used in determining the total replacement cost new, this court finds that the computations used by Leary for both the replacement cost new and the depreciated value of the buildings at twenty-five percent are more credible than Dondiego's 51.7 percent depreciated value. Taking Leary's value of the GE buildings at $85,085,000 ($82,510,000 buildings plus site improvements at $2,575,000) and adding the value of the land at $10,545,900, the court finds that the fair market value of the subject property as of October 1, 2001, was $95,630,900. Since the assessor's valuation of the subject property as of October 1, 2001, was $96,971,800, the subject property was overvalued by $1,340,900.

With this finding of value, the plaintiff has established that it was aggrieved by the assessor's valuation. Accordingly, judgment may enter in favor of the plaintiff sustaining its appeal.

Arnold W. Aronson
Judge Trial Referee