NO. CV 05 4006029S	:	SUPERIOR COURT
ALBEMARLE WESTON STREET, LLC	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
CITY OF HARTFORD	:	SEPTEMBER 22, 2006

MEMORANDUM OF DECISION

This is a real estate tax appeal by the plaintiff, Albemarle Weston Street, LLC, owner of land upon which a single-story, U-shaped multi-tenant commercial building is located at 92 Weston Street in the city of Hartford (city). It is the plaintiff's position that this court should order the city to reinstate the valuation of the plaintiff's property as listed on the 1999 Grand List.

The issue here is whether the city's assessor, Mr. Lawrence LaBarbera, may revalue real property during the interim period following a revaluation, and before the date of the next revaluation, when, as the assessor contends, subsequent to the revaluation, the assessor obtained information which showed a different use of the property than that existing at the time of the last revaluation.

The plaintiff acquired the subject property in February 2005. The subject building was constructed in 1978 and contains a total of 48,012 square feet. There are 42 rental spaces with separate entrance doors and movable walls. The plaintiff characterizes the building as "flex space." (Plaintiff's post-trial brief, p. 1.) See also Transcript of March

31, 2006, hereinafter 3/31/06 Tr., p. 47. A member of the plaintiff, Lisa Sadinsky, who is also involved in the management of the property, testified that "[t]he building is designed so that a tenant can use the space in any way the tenant wants without construction. That's what keeps it as an inexpensive building for tenants to move in and out of. It's designed as a *vanilla box*." (Emphasis added.) (Transcript of May 10, 2006, hereinafter 5/10/06 Tr., pp. 32-33.) Ms. Sadinsky described a vanilla box as "[f]our white plain walls. It has electrical outlets spaced appropriately for office and/or warehouse. . . . [Y]ou don't have to add HVAC systems. Everything is set up to accommodate either office or warehouse use." (5/10/06 Tr., p. 33.)

For the 1999 revaluation, the city engaged the services of the firm Cole, Layer and Trumbull (CLT). Pursuant to General Statutes § 12-62 (g), N. Rose, a CLT employee, inspected the subject premises and recorded that the subject building had a total building area of 48,012 square feet, of which 30%, or 14,403.6 square feet, was allocated for office space use and 70%, or 33,608.4 square feet, was allocated for use as warehouse space. See Exhibit C. As a result, the assessor determined that the fair market value of the subject property was $1,434,600, as of October 1, 1999, with an assessed value of $1,004,220. See Exhibit C. The prior owner of the subject property, Weston Square Associates, LLC (WSA), did not challenge this valuation.

In connection with the city's revaluation process of properties for the Grand List of October 1, 2003, the assessor notified the prior owner, WSA, on December 16, 2003 of

an assessment change in the amount of $1,365,630[1] for the Grand List of October 1, 2003. See Exhibit F. The assessor contends that a staff member from his office, Sanya Ahn, subsequently learned from WSA's agent during an informal review meeting on January 5, 2004, that 19,900 square feet of the total building's space was allocated for use as office space. See Exhibit E. This was an increase of 5,496.4 square feet over the square footage of office space recorded for the 1999 revaluation.

Before the 2003 Grand List was certified, the city council passed a resolution on May 24, 2004 to delay the implementation of the 2003 revaluation of all property until October 1, 2006. The legislature enacted Public Act 04-2, effective May 12, 2004 and codified as General Statutes § 12-62*l*,[2] which amended § 12-62 and permitted the city council to postpone the 2003 revaluation. See Exhibit A.

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[1] With respect to the city's December 16, 2003 notice, the fair market value of the subject property, as of October 1, 2003, was $1,950,900, based upon an assessment of $1,365,630.

[2] Section 12-62*l* provides, in relevant part, as follows: "(a) . . . [A]ny municipality required to effect a revaluation of real property under section 12-62 for the 2003, 2004 or 2005 assessment year shall not be required to effect a revaluation prior to the 2006 assessment year provided any decision not to implement a revaluation pursuant to this subsection shall be approved by the legislative body of such town. . . . (b) The assessor . . . of any municipality that elects, pursuant to subsection (a) of this section, not to implement a revaluation of real property for the 2003 assessment year shall prepare a revised grand list for said assessment year, which shall reflect the assessments of real estate according to the grand list in effect for the assessment year commencing October 1, 2002, subject only to transfers of ownership, additions for new construction and reductions for demolitions. Such assessor shall send notice of any increase in the valuation . . . ."

The assessor testified that "when the city decided to delay the revaluation, [his office] sent out new notices saying what [the properties'] value was for the 2003 Grand List without the revaluation in place." (3/31/06 Tr., p. 8.) On June 4, 2004, the assessor mailed a revised notice of assessment change to WSA in the amount of $1,392,090[3] for the Grand List of October 1, 2003. See Exhibits D and G. The assessor characterized the increase in the assessment to the "square footage discrepancy that [was] discovered from the informal hearing." (3/31/06 Tr., p. 28.) On November 17, 2004, the assessor informed another WSA agent that the assessment of the subject property was changed for October 1, 2003 because his office "discovered an error in the description of [the] property. . . . The corrected sizes are 4,801 sq. ft. of retail, 23,526 sq. ft. of warehouse and 19,685 sq. ft. of office." (Exhibit H.) Mr. LaBarbera testified that these figures demonstrate that the subject property contained 41% office space, 49% warehouse space and 10% retail space. See 3/31/06 Tr., p. 18.

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[3] With respect to the city's June 4, 2004 notice, the fair market value of the subject property, as of October 1, 2003, was $1,988,700, based upon an assessment of $1,392,090. The notice stated that, as a result of the city council's decision, the "assessment has been revised to reflect a value based on the last revaluation which was conducted for October 1, 1999. Any change in the assessment noted above is due to new construction, data changes that were discovered during the revaluation work, or a 10% penalty for failure to file the Annual Income and Expense form." (Exhibit G.) Mr. LaBarbera testified that after the 2003 revaluation was postponed, the city "revalued the [subject] property using the 1999 value levels and schedules but using the new information" regarding the office space square footage. (3/31/06 Tr., p. 10.) Mr. LaBarbera also testified that he considered the new information to be "data changes that were discovered during the [2003] revaluation work." (3/31/06 Tr., p. 16.)

The plaintiff relies upon Empire Estates, Inc. v. Stamford, 147 Conn. 262, 264-65, 159 A.2d 812 (1960) and the cases cited therein for the proposition that "[t]he power of assessors to alter assessments exists only during the lawful period for the performance of their duties, before the lists are completed and filed. . . . Once the assessors have completed their duties as prescribed by statute, they have no authority to alter a list except to remedy a clerical omission or mistake." (Citation omitted.) It is the plaintiff's position that the assessor did not make such an error. See 3/31/06 Tr., p. 2.

The city takes a different approach in defining the role of the assessor when making changes to the valuation of real estate post-revaluation. Relying on Matzul v. Montville, 70 Conn. App. 442, 798 A.2d 1002, cert. denied, 261 Conn. 923, 806 A.2d 1060 (2002) and DeSena v. Waterbury, 249 Conn. 63, 731 A.2d 733 (1999), the city claims that the assessor has the authority pursuant to General Statutes § 12-55 to make interim changes in the assessment of the plaintiff's property when there has been a mistake made in the assessment process.

Section 12-55 (b) provides, in relevant part, as follows: "Prior to taking and subscribing to the oath upon the grand list, the assessor . . . *shall equalize the assessments of property in the town, if necessary, and make any assessment omitted by mistake or required by law.* The assessor . . . may increase or decrease the valuation of any property as reflected in the last-preceding grand list . . . . In each case of any increase in valuation of a property above the valuation of such property in the last-preceding grand list, or the valuation, if any, stated by the person filing such declaration or report, the assessor . . .

shall mail a written notice of assessment increase to the last-known address of the owner of the property the valuation of which has increased. . . .” (Emphasis added.)

“In Matzul v. Montville, supra, 70 Conn. App. 442, the court analyzed the decision of DeSena v. Waterbury, 249 Conn. 63, 731 A.2d 733 (1999), and laid to rest any question about the ability of an assessor to make interim valuations. We conclude, therefore, that the [DeSena] court properly found that the assessor had the authority, pursuant to § 12-55, to make the interim change in the assessment of the plaintiffs' property. Matzul v. Montville, supra, 70 Conn. App. 449. Although § 12-55 may not be used by a taxpayer to compel interim revaluations, it does provide authority for an assessor to do so. Id., 448-49.” (Internal quotation marks omitted.) Fedus v. Colchester, Superior Court, judicial district of New London, Docket No. CV 02 0125210 (Apr. 19, 2004, *Aronson, JTR*).

“There is no ambiguity in this broad grant of powers to assessors. It is a clear legislative mandate to grant to local assessors a continuing duty unrelated to decennial revaluations, to achieve administratively a fair and equal assessment for all taxpayers. *The power to equalize the lists, if necessary, imports a watchtower role for the assessor to correct inequalities, whether too high or too low*.” (Emphasis added; internal quotation marks omitted.) Matzul v. Montville, 70 Conn. App. 446-47.

While § 12-62*l* is obligatory on assessors to make periodic revaluations, § 12-55 grants to the assessor a “watchtower” role in order to equalize assessments whenever it is necessary to correct inequalities. On the one hand, § 12-62*l* requires the assessor to

conduct a periodic revaluation of all property within his or her jurisdiction and bars the assessor from altering the grand list, except for clerical omissions or mistakes. On the other hand, § 12-55 grants the assessor permission, on a continuing basis, to eliminate inequalities, once discovered, so that the revaluation process will be fair and equitable for all taxpayers.

In its post-trial brief, the plaintiff suggests that the change in the square footage of office space occurred from changes in the use of the 42 rental units along with high tenant turnover between 1999 and 2004. The plaintiff also argues that the "[l]ack of building permits are not an indication of no change" and that evidence of construction between 1999 and 2004 exists. (Plaintiff's post-trial brief, pp. 6-8.) The assessor, Mr. LaBarbera, testified that the building footprint remained the same between 1999 and 2004. See 3/31/06 Tr., p. 15.

It is a general principle of appraisal practice that an appraiser must be familiar with the property inspection process in order to observe the components and characteristics of the subject property. "The importance of property inspection should not be underestimated. Much of the primary data an appraiser collects comes from the property inspection process." The Appraisal of Real Estate (12th Ed. 2001) p. 223. With this in mind, the court finds that there was insufficient evidence presented to support the city's contention that its appraiser, CLT, made a mistake during its inspection of the subject property for the 1999 revaluation year. The very nature of this property is to be flexible and it would not be unusual for there to be an increase or decrease of office, retail

or warehouse spaces between the 1999 revaluation and 2003 revaluation, even in the absence of building permits. It appears that subsequent events caused the use of office space in the subject property to increase to 19,900 square feet by the time the 2003 revaluation process occurred. There is no evidence to support the city's contention that the square footage of office space existing on October 1, 1999 was 19,900 square feet rather than the 14,403.6 square feet recorded by the city's appraiser CLT.

Although it is clear that the assessor has the authority to make an interim revaluation of the subject property in order to equalize the assessments, except where valuation changes are caused by market conditions, DeSena v. Waterbury, 249 Conn. 83, in the present case, the valuation change relating back to October 1, 1999 was caused by the perceived change in the subject property's use. In the assessor's estimation, the subject property's value increased when additional office space came to light because he assumed that his appraiser's inspection of the subject property prior to the October 1, 1999 Grand List was in error. However, the court finds no support for the assessor's claim that a mistake occurred in the process of the 1999 revaluation that would provide a basis for the assessor to make an interim revaluation of the subject property.

Accordingly, the plaintiff's appeal is sustained. Judgment may enter in favor of the plaintiff, without costs to either party.

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Arnold W. Aronson
Judge Trial Referee