NO. CV 07 4007441S	:	SUPERIOR COURT
PILOT'S POINT MARINA, INC.	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
TOWN OF WESTBROOK	:	NOVEMBER 6, 2008

MEMORANDUM OF DECISION

This action is a tax appeal by the plaintiff, Pilot's Point Marina, Inc., regarding the valuation of the largest marina in New England, located at 63 Pilot's Point Drive, in the town of Westbrook (town). The town's assessor valued the subject property, as of October 1, 2006, at $19,000,000. The plaintiff claims that it is aggrieved by the assessor's valuation of the subject property because it contends that the subject's value, as of October 1, 2006, was $15,700,000.

The marina was the subject of a previous tax appeal from the last revaluation date of October 1, 2001, where the court found the value of the subject property to be $12,232,313. See Pilot's Point Marina, Inc. v. Westbrook, Superior Court, judicial district of Middlesex at Middletown, Docket No. CV 02 0098650 (October 6, 2005, *Aronson, JTR*) (hereinafter referenced as Pilot's Point I).

In Pilot's Point I, the subject property was described as follows:

> "The subject property is an 852 boat slip marina located in the town of Westbrook (town) on the southerly side of the Boston Post Road known as U.S. Route 1. The property

> consists of approximately 84 acres of land situated along the Patchogue and the Menunketesuck Rivers, at a point where both rivers meet and empty into Long Island Sound. Approximately 20 to 25 acres out of the 84 acres consist of unusable wetlands. The marina is known for its efficient operations and commands such popularity that it maintains a waiting list for the rental of its boat docking slips. Indeed, the marina has the reputation as the 'Cadillac' of marinas."

In addition to the boat slips, the subject property also contains total building improvements of 96,199 square feet consisting of shop, industrial and warehouse space, commercial office and retail space, garage space, residential apartments, single family homes, a club house and a restaurant.[1]

The parties, their appraisers and the court agree that the highest and best use of the subject marina is for its continued use as a marina and boatyard.

The parties further agree that the income approach to value is the only viable method to determine the fair market value of the subject property as of October 1, 2006.

Under the income approach, "[t]he first objective in the valuation of real estate, after considering the highest and best use of the property, is to determine the amount of income that will be generated by the real estate, namely, the marina operation and rental income from the commercial and residential properties. In the income approach, it is important to determine EGI [effective gross income] which is 'anticipated income from

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In Pilot's Point I, there is a more detailed description of the subject's North Yard, South Yard, East Yard and Marina Village.

all operations of the real property adjusted for vacancy and collection losses.' The Appraisal of Real Estate (12th Ed. 2001) p. 484. After obtaining the EGI, the next step is to determine the operating expenses attached to the real estate. Deducting the operating expenses from EGI results in NOI [net operating income] which 'is the actual or anticipated net income remaining after all operating expenses are deducted from [EGI].' Id. The value of the real estate is then determined by dividing NOI by the capitalization rate. Id., 489." Pilot's Point I.

Out of the three components to the income approach (income, expenses and capitalization rate),[2] the parties agree on the capitalization rate of 11.5% and are fairly close on the subject's expenses. The plaintiff's appraiser, Thomas Merola (Merola) concluded that the operating expenses related to the subject real estate, as of October 1, 2006, was $3,309,427. The town's appraiser, Stephen R. Flanagan (Flanagan), concluded that the operating expenses related to the subject real estate, as of October 1, 2006, was $3,490,363. The plaintiff has no objection to the court using Flanagan's operating expenses rather than Merola's. See plaintiff's post-trial brief, p. 17. However, the parties disagree on the amount of EGI and the difference between the appraisers is $679,308.[3]

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See The Appraisal of Real Estate (12th Ed. 2001), pp. 493-94.

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Flanagan calculated EGI at $5,791,440 while Merola calculated EGI at $5,112,132.

A major component of EGI is the income derived from the rental of boat slips. Merola concluded that the market rental for slips in the subject area was between $75 and $140 per linear foot of boat, whereas Flanagan concluded that the market for boat slip rentals was between $120 to $140 per linear foot. Merola settled on a slip rental charge of $115 per linear foot of boat which, multiplied by 852 boat slips with an average length of boat at 32 linear feet, totals $3,135,360. Flanagan, on the other hand, used the actual rental boat slip income of $3,547,864 for the year 2007. Flanagan noted that the slip rental income for 2006 was similar at $3,505,461 at 100% occupancy. Dividing Flanagan's 2007 slip rental income of $3,547,864 by 860 (his reported number of boat slips) results in a per slip value of $4,125. Dividing Merola's total slip rental income for 2006 of $3,135,360 by 852 (his reported number of boat slips) results in a per slip value of $3,680.

Flanagan's use of the actual 2007 slip rentals represent his view that the income approach is based upon anticipation of benefits. See defendant's Exhibit A, p. 122. Since the revaluation date is October 1, 2006, the actual 2007 slip rentals reflect the effects of that anticipation. It would be appropriate for Flanagan to use actual rental figures (provided by the plaintiff) if Flanagan determined that the actual slip rentals represent market value. See General Statutes § 12-63b (b).[4] After reviewing "rates and rents from

[4] General Statutes § 12-63b (b) recites, in relevant part, that "the term 'market rent' means

other area marinas along the Connecticut coastline", Flanagan concluded that the 2007 actual slip rental income figures represent market value. (Defendant's Exhibit A, pp. 124-25.)[5]

For example, "[i]ncome is projected as follows for slips and storage:

> Slip Income - There are 860 slips on site that generated an actual income to include vacancy and collection costs in 2006 of $3,505,461 and 2007 of $3,547,864. This level indicated an average boat length of approximately 36 feet per the 2007 rental schedule at 100% occupancy.

This level of income is projected here: $3,547,864

> Winter and Summer Storage -The actual winter an summer storage income for 2006 to include any vacancy and collection loss is $1,611,042; 2007 income is $1,555,154.

This level of income is projected here: $1,555,154."

(Defendant's Exhibit A, p. 125.)

Contrary to Flanagan using the plaintiff's actual 2007 slip rental figures, Merola surveyed what he considered to be competing marinas to establish a range of slip rentals.

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the rental income that such property would most probably command on the open market as indicated by present rentals being paid for comparable space. In determining market rent the assessor shall consider the actual rental income applicable with respect to such real property under the terms of an existing contract of lease at the time of such determination."

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Flanagan's slip rental income is based upon his use of 860 boat slips. Without a prior challenge to the court's original finding of 852 boat slips (see Pilot's Point I) or documentation of why the number should be 860 rather than 852, it would appear that the plaintiff's own count of its boat slips would be more credible than a non-owner's count.

Although competing sales are important to determine highest and best use, when determining market rental rates, it is more appropriate to use rental rates from comparable properties rather than competing properties. For this reason, it is more credible to use Flanagan's slip rental rates as they reflect contract rent comparable to market rent. Because the subject marina is the largest marina in New England and is known as the "Cadillac" of marinas, it basically establishes its own market. See e.g., Mashantucket Pequot Tribal Nation v. North Stonington, Superior Court, judicial district of New London, Docket No. CV 01 0122894 (August 14, 2003, *Aronson, JTR*).

However, instead of using Flanagan's actual slip rental income figures that represents income for 2007, it is more appropriate to use the 2006 figure of $3,505,461 for slip rental income for the revaluation year of 2006. The purpose of the income approach is to analyze a property's capacity to generate benefits and convert these benefits into an indication of its present value, which in this case is October 1, 2006. See First Bethel Assoc. v. Bethel, 231 Conn. 731, 739, 651 A.2d 1279 (1995), citing The Appraisal of Real Estate (10th Ed. 1992), p. 409.

Since Flanagan's use of 860 boat slips at the plaintiff's marina does not reflect the correct count of slips, it is necessary to reduce Flanagan's slip income by $32,609 ($3,505,461 divided by 860 = $4,076 x 8= $32,609.) Although Flanagan recites that the slip income comes from the plaintiff's actual 2006 income figures, which included vacancy and collection costs, there is no support for this conclusion since Flanagan concluded that the slip rental income represents 100% of the rentals received by the plaintiff without any allowance for vacancy and collection loss. Taking Merola's 5% vacancy and collection loss calculation in arriving at slip rental income, Flanagan's 2006 slip rental income calculation is reduced by 5% to arrive at $3,299,209. Both appraisers recognize as additional income the plaintiff's $25,000 charge to its rental of boat slips for electrical reimbursement and an environmental charge totaling $32,271, resulting in $3,356,480 as the total gross income calculation.

Taking Flanagan's slip income, as adjusted, at $3,356,480, and adding Flanagan's winter and summer storage at $1,611,042, results in a total of $4,967,522 for 2006 which reflects the "present true and actual value" pursuant to General Statutes § 12-63 as of the revaluation year of 2006 based on EGI for the waterside component of the marina.

The last component to the plaintiff's EGI for the revaluation year of 2006 is the landside component consisting of rental income received from the industrial warehouse buildings, commercial buildings and residential buildings.

Flanagan developed the 23,007 square feet of tenant-occupied space (apartments, garages, offices and retail space) and the owner-occupied space of 72,095 square feet using a 10% vacancy and collection loss. In addition, there are residential units on the subject property that Merola notes were houses "offered to employees which is a common practice at marinas. Most marinas have residences on them. Over the years it was common for a marina operator to live at the site. Pilot's Point has more residences than is common, however, they are used as rental properties. Employees are extended a 25% discount over the asking rates. The rents for employee homes is $350 per month, which is $466 per month at market levels." (Plaintiff's Exhibit 1, p. 32.)

Upon review of the appraisers' analyses of the land component to the income approach, the court finds that Merola presents a detailed approach and explanation of the plaintiff's rental activities. Therefore, the court is led to accept Merola's landside EGI of $2,103,540 as more credible for the revaluation year of 2006.

Taking the waterside component of $3,356,480 and adding on the land component of $2,103,540 results in EGI of $5,460,020 for the subject property, as of October 1, 2006.

Taking EGI of $5,460,020 and deducting the operating expenses of $3,490,363, results in a net operating income of $1,969,657. Using the capitalization rate of 11.5% that both appraisers employed, the court arrives at a fair market value of the subject property, using the income approach, as of October 1, 2006, at $17,127,452. Since the court's determination of fair market value of the subject is less than the assessor's valuation of $19,000,000, the court finds that the plaintiff is aggrieved by the assessor's valuation of the subject property.

Accordingly, judgment may enter in favor of the plaintiff, sustaining its appeal, without costs to either party.

Arnold W. Aronson
Judge Trial Referee