NO. CV 08 4008929S	:	SUPERIOR COURT
PINECREST ESTATES, INC.	:	JUDICIAL DISTRICT OF DANBURY AT DANBURY
v.		
CITY OF NEWTOWN	:	SEPTEMBER 21, 2010

MEMORANDUM OF DECISION

The plaintiff, Pinecrest Estates, Inc., brings this real property tax appeal challenging the town assessor's valuation placed upon its property located at 32 Alberts Hill Road in Newtown for the revaluation year of October 1, 2007. The assessor placed a fair market value on the subject property, as of the revaluation date, of $3,007,714.

The subject property consists of approximately 22.668[1] acres of land that is zoned residential (R-2) primarily for the development of single-family residences on building lots of two acres or larger. The subject property has 1,214 feet of frontage on the north side of Alberts Hill Road and slopes upward from the road to the rear of the property. In addition to wetlands located in the southeast corner of the site, which does not have a significant impact on the use of the land, the subject is encumbered, in the southeast

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[1] Grant, the town's appraiser, identified the subject property as containing 22.4932 acres of land. See defendant's Exhibit I, p. 1. However, the property survey contained within Grant's appraisal report, see defendant's Exhibit I, p. 14, indicates the subject consists of 22.668 acres, which is the acreage figure that the plaintiff's appraiser Nocera relied upon.

section of the site, with a 50-foot wide natural gas transmission pipeline easement in favor of Algonquin Gas and a 50-foot wide electrical power easement in favor of the Connecticut Light and Power Company.

The subject property was formerly owned by Lutheran General Behavioral Health Corp. and operated as a residential alcoholic treatment facility known as Eagle Rest Hospital. Lutheran General had previously been granted a special permit use from the town's planning and zoning commission as a hospital for the treatment of alcoholism. The permit for the use of the property as a treatment facility was discontinued several years before it was sold on May 20, 2003 to Pinecrest Estates for $1,375,000.

The site was improved with seven buildings that supported the residential treatment facility. While the Stone House was built around 1848, all the buildings on the subject property were either renovated or constructed in 1980. The seven buildings contain a total of 26,188 square feet (SF) of gross building area including 3,312 SF of finished basement in one of the buildings.

One of the smaller buildings, the Carriage House, operated as an office and classroom building with garage and storage space. The Bath House was another smaller building containing 1,234 SF on two levels that supported and was in close proximity to the in-ground pool, tennis court and basketball court. The pool is no longer in use and is considered to be in poor to fair condition. The tennis and basketball courts are in need of substantial maintenance and repair.

Each of the remaining buildings had a housing component for dormitory-style residential living. The Merwin House contains a total of 4,824 SF with 1,242 SF dedicated as office space and 3,582 SF for housing and a nursing facility. This building has eight dormitory rooms served by common toilet facilities. Nocera noted that this building suffers from deferred maintenance and "[c]onsidering the size and layout of this building, there is substantial functional obsolescence and limited re-use potential. The dormitory-style residential area would not readily support conversion for a more traditional residential use and the office area, while efficiently constructed for that purpose, would have little re-use in the existing residential zone." (Plaintiff's Exhibit 1, p. 16.)

The Johnson House contains 4,621 SF. The interior of this house was built to support nine boarding rooms with shared facilities, a living room and fireplace. At the time of the appraisers' inspection, this house was completely gutted to the wood studs and electrical wiring. The plumbing fixtures have also been removed, leaving rough plumbing in place.

The Howard House contains 3,600 SF. This house contains eight boarding rooms with shared common toilets. This building also has a separate staff room with private toilet.

The Annex Building or community building contains a total of 6,097 SF of which 1,364 SF consists of a dormitory area. This building contains a large lecture hall, large game room, community rooms, large commercial kitchen and large dining hall.

As Nocera aptly observed, only one of the original buildings was used as a single-family house. The remaining buildings served multiple purposes such as dormitory use, meeting rooms, lecture halls, dining room, kitchen, office, training and recreational use.

The town's appraiser, Grant, noted an additional improvement including a pump house which is a concrete bunker containing two 10,000-gallon underground storage tanks providing drinking water and support for the fire sprinkler system. The emergency fire system includes a generator and underground storage tanks. Also included is a 1,400 lineal foot roadway. See defendant's Exhibit I, p. 17.

Public utilities, such as electricity and telephone, are available to the site. Natural gas is not available. There is an on-site community well water supply system and a septic system that was originally designed to accommodate the high level of residents and staff of the treatment hospital. See defendant's Exhibit I, p. 12.

As of October 1, 2007, the plaintiff's appraiser, Nocera was of the opinion that the fair market value of the subject premises was $2,112,000. Nocera's valuation was broken down as follows: land – $544,000; improvements – $1,568,112. The town's appraiser, Grant, was of the opinion that the fair market value of the premises was $3,130,000. Grant's valuation was broken down as follows: land – $900,000; improvements – $2,230,000.

Both appraisers agree that the highest and best use of the subject premises is to use the site for residential development utilizing the seven buildings on the premises by

converting the buildings into residential uses. See plaintiff's Exhibit 1, p. 20; defendant's Exhibit I, p. 27.[2]

Nocera explained his reason for his highest and best use for residential use as follows:

"The subject property is improved with seven structures, four of which are large and accessed via a main roadway. The balance of the structures, one which is a small residence that was the existing structure on the site, one which was built to look like a small residence but functioned as an office and classroom building with maintenance and storage facilities below, and one which also looks like a small residence but is a recreation building used to support the existing recreational facilities. To consider the Highest and Best Use of the subject property as improved, one must consider the allowable uses under present zoning, which with exception, would allow for the continuation of a residential treatment facility if demand for such a facility were present. However, no indicated demand for such a facility appears to exist and so the structures, as

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[2] "In the first series of tests of highest and best use, land is first valued as though vacant and available to be developed to its highest and best use; the ultimate conclusions of highest and best use analysis are based on the highest and best use of the property as improved. Thus, a parcel of land may have one highest and best use as though vacant, and the existing combination of the site and improvements may have a different highest and best use as improved. Existing improvements have a value equal to the amount they contribute to the site, or they may penalize value, often by an amount equal to the cost to remove them from the site." The Appraisal of Real Estate (12th Ed. 2001) p. 353. In this case, both appraisers concluded that the seven buildings added value to the site and should not be demolished.

they were originally designed and developed, appear to suffer from substantial functional obsolescence since the specific development use is no longer in demand.

"Considering the uses that are permitted under zoning, the use which appears to come closest to conforming to present zoning would be to convert the seven buildings into seven single-family residences with three of those converted residences being smaller homes and four being substantially larger homes. In addition, the existing recreational facilities to include the swimming pool and tennis court could be retained for use by one or more of the occupants of the single-family homes. An alternative would be the removal of all site improvements, returning the land to its original vacant state, allowing for it to support open uses such as farming or for subdivision into the number of lots that would be allowed based on the site configuration. This would give no credit to the value of the improvements and would result in a substantial increase in the cost of ownership because of the expenses involved in demolition and site clean-up.

"Based on the alternatives that are available, and considering that the seven (7) original structures were built or renovated to support a residential use, then it is our opinion the Highest and Best Use for the subject property would be for its conversion to seven (7) single-family residences with the land area appropriately allocated to support that use. This would also allow for the maximum use of existing site improvements." (Plaintiff's Exhibit 1, pp. 19-20.)

As part of the history of the subject, Grant noted:

"As of December 5, 2005 planning and zoning received an application for a proposed 56-unit elderly housing complex known as Pinecrest Estates. In order for this plan to be approved, it would have to be considered a special exception use with a zone change request to a EH-10 zone. Neighborhood opposition to the proposed zone change was fierce. As of January 19, 2006, the Newtown Planning and Zoning Commission disapproved the application for a zone map change due to the following stated reasons: buildings, parking lots and sidewalks located within the building setbacks; there is no second access way to the site; the roadways do not meet the design criteria for a residential street and there is no performance bond estimate for the site." (Defendant's Exhibit I, p. 9.)

Recognizing that both appraisers have concluded that the subject's highest and best use is premised on subdividing the land so that it will support the conversion of the existing seven structures into residential homes sitting on seven lots, and further recognizing that the subject property is not income-producing, the appraisers call for a valuation of the subject property using the cost approach to value since neither appraiser identified any comparable sale of property. "Under the cost approach to valuation, the appraiser estimates the current cost of replacing the subject property, with adjustments for depreciation, the value of the underlying land, and entrpreneurial profit." United Technologies Corp. v. East Windsor, 262 Conn. 11, 17 n.8, 807 A.2d 955 (2002), citing J. Eaton, Real Estate Valuation in Litigation (2d Ed. 1995) p. 157. Therefore, the cost approach is the only credible method of valuation for the subject property.

The use of the cost approach requires a decision by the appraiser regarding whether to use the reproduction or the replacement method for determining the costs. Recognizing that using the reproduction approach requires the construction of improvements that are an exact replica of the subject, the exact reproduction of the buildings would not comport with the highest and best use selected by the appraisers. See The Appraisal of Real Estate (12th Ed. 2001) p. 350. Excluding the reproduction cost, both Nocera and Grant use the replacement cost less depreciation plus the market value of the land to arrive at the subject's fair market value. In considering the replacement cost, both appraisers undertook an analysis of converting the existing buildings that were used as an alcohol treatment hospital to that of single-family residences. Notably, neither appraiser based this conversion on input from a building contractor, architect, engineer or land planner.

Grant recognizes that the subject property has not been approved for residential subdivision and that "[t]he application process for subdivision approval entails expense and risk. Buyers typically pay a premium for an approved subdivision; they are more able to accurately project prospective revenues and expenses, as the number, size and configuration of lots and street improvements is established. Time required for design, review and approval of a development is costly in terms of interest and marketing risk." (Defendant's Exhibit I, p. 29.) In spite of Grant's comment that buyers typically pay a premium for an approved subdivision, his selection of land sales upon which he based his opinion of value consisted mainly of approved subdivisions although the subject property

itself was never an approved subdivision. Grant selected subdivision sales as comparable to the subject because it was his opinion that is was "reasonable to assume that approvals could be secured if the plan involved a moderate density of development." (Defendant's Exhibit I, p. 30.)

Given the fact that the present zone requires two-acre lots, it appears that there would be little room for any additional residential two-acre lots as there still exists a road, swimming pool, tennis court, basketball court, two easements and wetlands. In addition, the road does not meet town standards as noted by the town's planning and zoning commission, that the roadway did not meet the design criteria for a residential street, which is contrary to Grant's comment that the "interior roadway reportedly [was] constructed to town standards." See defendant's Exhibit I, p. 30.

Nocera acknowledges that there is no site plan showing a subdivision of lots on the subject property and if the intention is to use the seven buildings for single-family residences, either the property must be subdivided along the lines of the existing buildings or the site could be made into a cooperative or condominiums which would entail a change of zone or a special exception. Neither appraiser would conclude that a cooperative or a condominium development would succeed before the town's planning and zoning commission. Neither appraiser took into consideration the fact that the subdivision would have to be planned to accommodate the location of the seven buildings and still meet all of the requirements of the zoning regulations in regard to two-acre lots, street frontage and yard requirements.

George Benson, the town's director of planning, speculated that the property could be subdivided along the lines of the seven buildings with the aid of a variance if needed. A variance is generally based upon a hardship not a self-created hardship such as the present proposal to subdivide. See Moon v. Zoning Board of Appeals, 291 Conn. 16, 24, 966 A.2d 722 (2009) ("[p]roof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance. . . . A mere economic hardship or a hardship that was self-created, however, is insufficient to justify a variance . . ."). (Internal quotation marks omitted.)

Considering the market value of the subject land, as of October 1, 2007, Nocera's value was $24,000/acre (see plaintiff's Exhibit 1, p. 26), whereas Grant's value was $40,000/acre (see defendant's Exhibit I, p. 31).

Nocera selected nine sales of property in Newtown ranging from a 14.50-acre parcel of land that sold on July 12, 2007 for $1,000,000 ($68,966/acre) to a 67.50-parcel of land that sold on December 6, 2006 for $62,500 ($926/acre). Nocera eliminated two sales at both the upper and lower end of values. Therefore, he relied on five sales in the middle of his selection. Nocera concluded that with the range of value from $17,096/acre to $30,506/acre, the market value of the land was $24,000/acre. See plaintiff's Exhibit I, p. 26. Of Nocera's nine sales, six were not approved subdivisions at the time of sale. See plaintiff's Exhibit I, pp. 22-23.

Grant selected seven sales of property in Newtown ranging from a 13.96-acre parcel of land that sold on January 11, 2005 for $2,040,000 ($146,132/acre) to a 72-acre

parcel of land that sold on January 6, 2005 for $3,470,000 ($48,153/acre). Grant eliminated sale five (the $146,132/acre parcel) as extreme and then averaged the remaining six sales to arrive at a value of $37,318/acre rounded to $40,000/acre as the subject's market value as of October 1, 2007. See defendant's Exhibit I, p. 31. Multiplying the $40,000/acre value by 22.4932 acreage of the subject (as found by Grant), Grant concluded that the subject's land value, as of October 1, 2007, was $900,000 (rounded).

All of Grant's sales were approved subdivisions prior to the sale, except for sale four which was approved as a subdivision more than three years after the sale date. Sale one was a six-lot subdivision on approximately 20 acres (5 finished lots, 5.04-acre open space and roadway). Sale two was a 15-lot subdivision on 65.251 acres. Sale three was an 8-lot subdivision on 29.03 acres. Sale four was a 17-lot subdivision with 15 new lots and 2 existing lots on 67.872 acres. Sale five contained 6 lots on 13.96 acres within which was 6.9 acres of wetlands. Sale six was an 18-lot subdivision on 72.0625 acres. Sale seven was approved for a subdivision of 4 residential lots on 20.321 acres.

Nocera and Grant selected three identical sales in Newtown. However, in making their adjustments, Nocera gave these three negative adjustments while Grant gave them positive adjustments. The three sales were fairly large parcels compared to the subject:

Address	Acreage	Lots	Price/Acre
15 High Bridge Road	65.251	15	$25,908
46 Eden Hill Road	67.872	17	$30,351

Philo Curtis Road	29.030	8	$37,203

The problem with the appraisers' valuation process is that the subject was not subdivided into lots. No application for subdivision approval had previously been prepared for presentation to the town's planning and zoning commission. The subject was not your typical vacant tract of land waiting to be subdivided into building lots. It was improved with seven buildings and had a road. An examination of a property sketch in Grant's appraisal report, defendant's Exhibit I, p. 13, shows four buildings located along an interior road, one small building located near the utility easements and the swimming pool and two small buildings located in the southeast corner of the property near the wetlands and the utility easements. In addition, both appraisers contemplate that the subdivision of the property would be executed so that each existing building would be on its own separate two-acre lot.

If, as both appraisers and the town planner conclude, that the town will, in all likelihood, approve the subdivision of the property as proposed, then it would be reasonably probable that the subject has value as a subdivision. See Town of Branford v. Santa Barbara, 294 Conn. 785, 795-96, 988 A.2d 209 (2010). However, since subdivision approval has not yet been applied for and both appraisers are looking to value the subject property as if it were subdivided into seven two-acre lots, all of the sales selected by Nocera and Grant, whether subdivided sales or not, should be considered.

Of the unapproved subdivision sales Nocera selected, the sales most comparable to the subject are:

Sale 2, located at 22 Hattertown Road, Newtown, that sold for $35,062/acre.

Sale 9, located at 46 Eden Hill Road, Newtown, that sold for $30,352/acre.

These two sales selected by Nocera result in an average price of $32,707/acre. On the other hand, Grant's selected sales amount to an average price per acre of $37,318.

Considering the sales selected by Nocera and Grant, the court concludes that, as of October 1, 2007, under the cost approach, the land sales indicate a value of $32,000/acre for the land of the subject. The total land value, using this process, is $725,376.[3]

Turning to the valuation of the improvements on the subject property under the cost approach, Nocera went through a detailed review of each of the improvements. He converted the seven existing buildings into residential homes using Marshall Valuation Service to develop replacement costs; he then took an appropriate depreciation resulting in a net replacement value of $1,568,112, including site improvements, as of October 1, 2007.

Grant, following the same procedure used by Nocera, calculated a replacement value of $2,230,000, including site improvements, as of October 1, 2007.

To put this case in proper perspective, if the court were to accept Grant's valuation of the subject property at $3,130,000, given the fact that the subject was purchased in March 2003 for $1,350,000, the court would have to conclude that the subject appreciated in value more than double in four years. Given the fact that Grant

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[3] Calculated as follows: $32,000 x 22.668 acres.

acknowledged that the so-called structures on the property had not been improved since the date of purchase and have become vandalized in addition to some of the buildings containing mold, and considering that the Johnson House was completely gutted to wood studs and electrical wiring,"[4] it is difficult to accept his total valuation of the land at $900,000 plus improvements at $3,649,007 for a total value of the subject, before depreciation, at $4,549,000 (rounded) or $650,000 (rounded) for each of the seven residences. See defendant's Exhibit I, p. 44. Whereas Grant's total depreciation for the improvements amounted to approximately 40%, Nocera's total depreciation of the improvements amounted to approximately 58%.

Given a choice of accepting Grant's replacement value of $2,230,000 or Nocera's replacement value of $1,568,112, it is more credible to accept Nocera's valuation. See Route 188, LLC v. Middlebury, 93 Conn. App. 120, 124, 887 A.2d 958 (2006).

Taking the land value as determined by this court at $725,376 and adding the value of the improvements of $1,568,112, the court places the fair market value of the subject property at $2,293,488, as of October 1, 2007.

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

Arnold W. Aronson
Judge Trial Referee

[4] See plaintiff's Exhibit 1, p. 16 and defendant's Exhibit I, p. 17.