NO. CV 08 4019333S	:	SUPERIOR COURT
REDDING LIFE CARE, LLC	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
TOWN OF REDDING	:	FEBRUARY 23, 2011

MEMORANDUM OF DECISION

The plaintiff, Redding Life Care, LLC (Redding Life), a Connecticut for-profit limited liability company, brings this real property tax appeal contesting the valuation placed upon its property located at 100 Redding Road in the town of Redding (town). The town's assessor conducted a town-wide revaluation of all real estate for the Grand List of October 1, 2007. The plaintiff amended its complaint to include the subsequent Grand List years of October 1, 2008, 2009 and 2010. See second amended appeal #131, dated November 1, 2010.

FACTS

The plaintiff purchased the subject site of 133.62 acres in August 1998 for $5,500,000 for the purpose of developing Meadow Ridge, an entry fee continuing care retirement community (CCRC). Phases I and II of the development were completed in October 2001 and August 2007, respectively.

Only 30-40 acres in the southerly portion of the entire site were developed. The northerly portion of approximately 70 acres contains a conservation easement which may be accessed via walking trails by Meadow Ridge residents and the public.

Meadow Ridge contains three distinct building components, namely:

> "1) three separate, four-story, excellent quality, Class A, congregate retirement apartment and limited common area buildings . . . which include 338 total entry fee apartments;
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> "2) a one to two-story, excellent quality, Class A, attached community building; and
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> "3) one, one to two-story, excellent quality, Class A, attached health center, and which includes 20 assisted living units and 50 skilled nursing beds and separated common areas.
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> "The commons building and health center are actually one connected building; the three apartment buildings are connected to the commons building via enclosed walkways. The buildings are surrounded by interior driveways, open paved parking areas, some resident garages and landscaped areas, including three large courtyards."

(Plaintiff's Exhibit 1, p. 36.)

The difference in the fair market valuation between the parties is nearly $30,000,000. As of October 1, 2007, the plaintiff contends that the subject real estate, as improved, had a fair market value of $89,100,000 (assessment value of $62,370,000), while the assessor determined that the fair market value of the subject real estate, as improved, was $117,621,000 (assessment value of $82,334,600). See plaintiff's 11/1/10 brief, p. 2.

Three buildings, designated as Laurel, Spruce and Phase II Maple, contain 338 entry fee apartments. There is a unit mix of 94 one-bedroom, two-bath units of 850 to 1,250 square feet (SF) and 244 two-bedroom, two-bath units of 1,350 to 2,600 SF. See plaintiff’s Exhibit 1, p. 56.

In the assisted living area, there are 3 studio units of approximately 633 SF and 17 one-bedroom units of approximately 700 SF. The skilled nursing facility has 14 private, one-bedroom units of approximately 300 SF and 18 semi-private, two-bedroom units of approximately 460 SF. See plaintiff’s Exhibit 1, p. 56.

All residential apartment interiors include a full kitchen, an entry foyer, walk-in closets, washer/dryer units and decks/balconies. Some units have a fireplace.

All Meadow Ridge residents must execute a continuing care agreement that sets out the financial obligations of the resident and the obligations of Meadow Ridge to provide lifetime care to the resident. The agreement provides, in part, as follows:

“Under the Meadow Ridge continuing care agreement, the subject accepts as residents of the independent living units persons at least 62 years of age who are able to function independently at the time of admission, and who have sufficient financial resources to pay the entrance fee, monthly service fees and other expenses associated with independent living. Under the terms of the residence agreement, the resident agrees to pay an initial entrance fee and a monthly service fee which entitle the resident to occupy an independent living unit for a lifetime, subject to certain conditions outlined in the agreement. Residents currently receive a flat 85%[1] refund (not the resale price) of their entry fee paid upon death, voluntary withdrawal or permanent transfer to the assisted

[1] The refund percentage may vary slightly. For purposes of this appeal, the court will refer to an 85% refund rate.

living or health center. . . .

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“Services provided to residents at no additional cost include one meal per day, building and grounds maintenance, custodial service, weekly flat laundry service, scheduled transportation service, all utilities except telephone and cable television, special diet and tray service when approved by a physician, planned activities, biweekly housekeeping services, parking, use of all common and activity areas, an emergency call system, and facility security. The residence agreement also entitles residents guaranteed access to assisted living or nursing care at a discount below a market rate and equal to the lower of a two bedroom monthly fee or the monthly fee of the previously occupied unit, plus surcharges for extra meals and services. This benefit is unlimited. Monthly service fees are subject to increase at the discretion of the owner upon 30 days notice to the residents.”

(Plaintiff’s Exhibit 1, p. 65.)

The plaintiff’s appraiser, Michael G. Boehm (Boehm), undertook to value the subject real estate, as of October 1, 2007, by first estimating the going concern[2] value

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2 “A going concern is an established and operating business with an indefinite future life. For certain types of properties (e.g., hotels and motels, restaurants, bowling alleys, manufacturing enterprises, athletic clubs, landfills), the physical real estate assets are integral parts of an ongoing business. The market value of such a property (including all the tangible and intangible assets of the going concern, as if sold in aggregate) is commonly called its going concern value. . . .” The Appraisal of Real Estate (12th Ed. 2001), p. 27. The going concern value is also known as the business enterprise value.

theorizing that an investor would look at the purchase price of the retirement complex directly linked to market data. In this regard, Boehm determined that the total going concern value of the complex, as of October 1, 2007, was $108,225,000. See plaintiff's Exhibit 1, pp. 4, 142. From this amount, Boehm divided the going concern value into three components:

Personal property	$ 2,775,000
Business value	$16,350,000
Real estate value	$89,100,000

Boehm considered only the income approach to value the subject as a going concern. Boehm neither considered the market sales approach nor the cost approach, although the costs of land acquisition and construction were recently incurred in the amount of $175,438,966.

Boehm explained his rationale for not using the cost approach as follows: "This approach [cost] is also rarely relied on by buyers and investors in valuing/pricing properties like the subject (even when new because cost does not equal value). We are not aware of the sale of any CCRC in the country wherein the buyer gave material weight to a Cost Approach analysis in pricing their purchase." (Plaintiff's Ex. 1, p. 96.) Boehm, in rejecting the use of the sales approach stated, "we have not estimated a value for the subject using a Sales Comparison Approach. We are not aware of the sale of a truly comparable cash flow stream (for a entry fee [CCRC]) to that estimated for the ownership interest in the subject property." (Id., 97.)

ISSUES

As in any § 12-117a appeal, the key issue in this case is whether the plaintiff has proven itself to be an aggrieved party because the assessor and the board of assessment appeals have overvalued the plaintiff's real estate for the revaluation year of October 1, 2007 and subsequent years. As discussed in Breezy Knoll Assn., Inc. v. Morris, 286 Conn. 766, 775, 946 A.2d 215 (2008), "the trial court performs a two-step function. The burden, in the first instance, is upon the plaintiff to show that he has, in fact, been aggrieved by the action of the board in that his property has been over assessed. . . ." Thus "aggrievement" is a key factor to be resolved before considering the issue of valuation.

The issue of aggrievement is addressed in the plaintiff's 11/1/10 brief, p. 25, that "based on the testimony of Mr. Boehm, as supplemented by the testimony of Mr. Reis and Mr. McMurtry and the other evidence, there is no doubt that the Plaintiff has established that it is aggrieved. The evidence establishes that the subject property should have been valued at most at $89,100,000 and therefore should have been assessed at most at 70% thereof, or $62,370,000. The Town's assessment of $82,334,600 over assessed the property by nearly $20,000,000. The touchstone of aggrievement clearly has been established."

The going concern value in this case consists of the real estate, the personal property and the intangibles.[3] In the context of this case, the statement that the value of

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Intangible personal property, for tax purposes, has been defined as "property which is not itself intrinsically valuable, but which derives its chief value from that which it the subject property is “at most $89,100,000” refers to the value of the real estate which Boehm extracted from the total value of Meadow Ridge as a going concern.

ANALYSIS

Boehm, as well as the defendant's appraiser, James Tellatin[4], concluded that the valuation of the subject real estate could only be accomplished by determining the value of Meadow Ridge as a going concern. Once this was known, the appraisers valued the real estate by extracting the value of the furniture, fixtures and equipment (FF&E) and the intangibles from the going concern value. Because of this inconsistency in determining whether it was the plaintiff's real estate or its going concern that is claimed to be overvalued, it is necessary to set forth certain general principles used in the valuation of real estate.

First, in Whitney Center, Inc. v. Hamden, 4 Conn. App. 426, 427, 494 A.2d 624 (1985), where residents paid to a life care center a lump sum entrance endowment and a monthly service fee, the court stated as follows: “For assessment purposes, the value of

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represents.” Capital City Country Club v. Tucker, 613 So.2d 448, 452 (Fla. 1993).

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Although the defendant disclosed James Tellatin (Tellatin) as its expert appraiser, the defendant elected not to present Tellatin in support of the town's valuation of the subject. Instead, the plaintiff introduced Tellatin's pretrial deposition testimony. See plaintiff's Exhibits 21a and 21b. In that deposition, Tellatin testified that, in his opinion, the value of Meadow Ridge, as of October 1, 2007, was $128,000,000, which included the fee simple interest of the real estate, tangible personal property and intangibles. See plaintiff's Exhibit 21a, p. 48. Since it is the plaintiff's initial burden to show that it was aggrieved by the assessor's valuation of its real estate, the town had no obligation to present the opinion of Tellatin to defend the assessor's valuation. See Ireland v. Wethersfield, 242 Conn. 550, 557-58, 698 A.2d 888 (1997).

the plaintiff's real estate must be distinguished from the value of its business since it is the realty itself which is subject to the property tax assessment. This task is complicated . . . by the close relationship between the business and the land as well as by the fact that residents do not pay rent in the traditional sense." (Citations omitted.)

The second general principle is that the highest and best use of the property determines what method of valuation is used. See United Technologies Corp. v. East Windsor, 262 Conn. 11, 25, 807 A.2d 955 (2002). There was no dispute in this case that the highest and best use of the Meadow Ridge property was its continued use as a CCRC. However, in Boehm's opinion, this use dictated that the income approach would be the sole method of valuation.

A third general principle is that the income approach is used to value real estate through the capitalization of the property's earning power, such as the collection of rental income. See The Appraisal of Real Estate (12th Ed. 2001) p. 50. The income approach uses "a valuation method that determines property value by derivation of the rental value of the property and may include anticipated future income that has been discounted to a present value." Loiseau v. Board of Tax Review, 46 Conn. App. 338, 341, 699 A.2d 265 (1997).[5]

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[5] The income approach consists of the following steps: "(1) estimate gross income; (2) estimate vacancy and collection loss; (3) calculate effective gross income (i.e., deduct vacancy and collection loss from estimated gross income); (4) estimate fixed and operating expenses and reserves for replacement of short-lived items; (5) estimate net income (i.e., deduct expenses from effective gross income); (6) select an applicable capitalization rate; and (7) apply the capitalization rate to net income to arrive at an

Even Boehm acknowledged that the income approach is based upon the income produced by the real estate when he stated: "The Income Approach is based upon the economic principle that the value of a property capable of producing real estate income is the present worth of anticipated future net benefits. The net income projection is translated into a present capital value indication using a capitalization process." (Plaintiff's Exhibit 1, p. 98.) Contrary to this statement, Boehm's valuation of the subject real estate was not founded on income derived from real estate, but on the valuation of the total business of Meadow Ridge and the extraction of the real estate value.

When talking about real estate producing income, such as income derived from rents, a life care contract, which is the primary source of income for a CCRC, is not rental income derived from real estate. As noted in Jackim v. CC-Lake, Inc., 842 N.E.2d 1113, 1118-19 (Ill. App. 2005), a "life care agreement cannot be construed as a lease because it does not convey the right to exclusive possession of specific premises. . . . [I]t provides for a range of residential settings over the remaining course of a contracting individual's lifetime, and therefore, it is not a lease." Boehm concurred in his testimony that a life care agreement does not provide a resident with equity rights to any of the units.

Considering the subject's going concern value with its anticipated future benefits, Boehm concluded that the discounted cash flow analysis (DCF), a method for estimating

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indication of the market value of the property being appraised. . . .The process is based on the principle that the amount of net income *a property can produce* is related to its market value." (Emphasis added; internal quotation marks omitted.) Branford v. Santa Barbara, 294 Conn. 785, 793 n.12, 988 A.2d 209 (2010).

the present worth of future cash flow expectancies, was the most accurate method to use in determining the going concern value. As Boehm noted, "[t]he indicated market value by this approach is the accumulation of the present worth of each projected year's net income (before debt service, income taxes, and depreciation) and the present worth of the reversion of the estimated property value at the end of the projection period. The estimated value of the reversion is based on the direct capitalization of the reversion year's net income." (Plaintiff's Exhibit 1, p. 98.)

In determining the income from Meadow Ridge, Boehm "utilized a projection period of October, 2007 to September, 2018 which reflects a 10-year discounted cash flow analysis. These extended cash flows are considered appropriate considering the complicated components of revenue and expenses for a sophisticated property such as the subject. This time period also reflects the estimated time to achieve approximate actuarial (fixed level of annual unit turnover) and cash flow stabilization." (Plaintiff's Exhibit 1, p. 99.)

Although Boehm used the income approach to value Meadow Ridge from the standpoint of a purchaser, it is difficult to accept his reasoning that the same income approach used to value the going concern is also used to determine the market value of the real estate. In fact, it does not.

The subject property, as a going concern, derives its income from the business operation of a CCRC. It does not produce income that is derived from real estate as would an apartment complex or an office building. The income in this case is generated from the operation of the business that draws on entry fees and monthly maintenance charges to support its operation. The question here is whether these fees and charges, as suggested by Boehm, are related to the production of income derived from real estate.

The income approach relates to the income produced in the market solely related to the real estate. The going concern value relates to the income produced by the operation of a business. The income approach is market-oriented, whereas the going concern is investor-oriented. "Market value is objective, impersonal, and detached; investment value is based on subjective, personal parameters. To develop an opinion of market value with the income . . . approach, the appraiser must be certain that all the data and forecasts used are market-oriented and reflect the motivations of a typical investor who would be willing to purchase the property at the time of the appraisal." The Appraisal of Real Estate (12th Ed, 2001) p. 476. Investment value for the valuation of a business, in contrast to market value, is further defined as "[t]he specific value of an investment to a particular investor or class of investors based on individual investment requirements[.]" Id.

"Whenever property has a particular utility to a business or enterprise, its value will reflect that utility and, indirectly, intangible business values as well. This problem arises in every form of taxation that prescribes differential treatment for tangible and intangible property. The federal income tax law, for example, permits no depreciation or amortization deductions for property without an ascertainable useful life, such as business goodwill. This means that the purchase of an ongoing business requires allocation of the payment for income tax purposes, not only between depreciable buildings and nondepreciable land, but also between depreciable assets and goodwill." See J. Youngman, Property Valuation and Taxation, Lincoln Institute of Land Policy, (2006 Ed.) p. 12.

In this sense, a purchaser of a going concern, like a CCRC, would most likely consider allocating, for tax purposes, a greater amount of value to depreciated buildings and personal property than nondepreciable assets such as intangibles.

In Boehm's use of the income approach, he considered the market for the sale of units involving the payment of a first generation entry fee in his attempt to develop rental income upon which to derive a potential gross income.

Since Boehm's valuation of the subject is premised upon the receipt of first generation entry fees producing rental income, it is necessary to fully understand the meaning of the CCRC and the use of first generation entry fees in the valuation process.

As Boehm noted, "[t]he elderly are by far the fastest growing population segment, whether expressed in percentage increase or actual number of persons. Although not as well documented statistically, the elderly have more money than ever before because of social security, pension programs, savings and the substantial increase in the market value of their residences. Most of them are active and in reasonably good health. This increased health and life expectancy lends them to seek life enriching activities through an independent lifestyle that provides assistance when needed." (Plaintiff's Exhibit 1, p. 62.)

According to Boehm, the major types of housing for the elderly include:

> "Congregate Housing (ACLF, congregate or independent housing): Specially planned, designed and managed multi-unit rental housing typically with self-contained apartments. Supportive services such as meals, housekeeping,

> transportation, social and recreational activities are usually provided. In Connecticut, as in most states, these facilities are not licensed.
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> "Assisted Living (ALF, personal care or residential care): Group living arrangements that provide staff supervised meals, housekeeping and personal care (assistance with bathing and medication) and private or shared sleeping rooms. These facilities are generally licensed and must meet designated operating standards including minimum staff requirements. In Connecticut, these facilities are known as managed residential communities which are not licensed by the State. The State of Connecticut does allow assisted living services to be provided by a licensed assisted living service agency in a managed residential community (the agency is licensed not the project) with the Connecticut Department of Public Health.
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> "Care Facilities (SNF, skilled nursing or intermediate care) skilled nursing and intermediate care facilities (commonly known as nursing homes) are operated under the guidance of a licensed administrator with licensed nurses and aides providing around the clock nursing care, generally one step below that offered at an acute care hospital. In Connecticut, these facilities must be licensed with the Connecticut Department of Public Health. Connecticut requires a certificate of need for new nursing homes or bed additions and currently has a moratorium on new nursing home beds."

(Plaintiff's Exhibit 1, pp. 62-63.)

Boehm describes a CCRC as "[a] housing development planned, designed and operated to provide a full range of accommodations and services for older adults, including independent living, congregate housing and medical care. Residents may move from one level to another as their needs change. CCRCs typically charge a buy-in fee (sometimes refundable) in addition to a monthly maintenance fee for services. In Connecticut, these facilities (actually the contracts) are known as [CCRCs] which are registered with the Connecticut Department of Social Services." (Plaintiff's Exhibit 1, p. 63.)

Consistent with Boehm's description of a CCRC, Meadow Ridge offers services for three types of elderly: (1) fully active who desire apartment-style living, (2) not-so active who desire a hotel-like lifestyle offering meals, housekeeping and transportation and (3) inactive who need a medical facility but not a hospital. See plaintiff's Exhibit 1, p. 62.

Using DCF, Boehm considered the combination of total receipts turned over to the plaintiff from the sale of apartment units and net operational cash flows obtained from the receipt of operational income, less operational outlays. As an example, at year one (10/01/07-9/30/08):

Net turnover receipts (ILU)	$ 1,994,383
Total operational receipts	<u>$21,804,289</u>
Total income	**$23,798,672**
Total operational outlays (expenses)	$19,244,479
Net operational cash flows	$2,559,811 ($21,804,289 - $19,244,479)

The total of $1,994,383 ILU and the net operational cash flows of $2,559,811 is $4,554,194. Boehm discounted this amount by 12% to arrive at a discounted value for the first year of DCF at $4,066,244. See plaintiff's Exhibit 1, p. 136.

For the period of October 2007 through September 2018, Boehm followed this same process to arrive at $67,825,000 for the total "ownership discounted cash flows-unit turnover and net fees." See plaintiff's Exhibit 1, pp. 136-138. To this amount, Boehm added $40,400,000 for the "first generation entry fees-77 unoccupied units" to arrive at a total income approach value of $108,225,000. See id., p. 138.

Boehm established the value of FF&E by relying on "recognized cost manuals and the actual incurred costs of FF&E at comparable multiple level retirement campuses." (Plaintiff's Exhibit 1, p. 142.) This process is basically an estimate of the FF& E replacement costs. As noted above, Boehm did not consider actual investment costs that Meadow Ridge paid for its FF&E.[6] Boehm thereby concluded that his "appraisal estimates reflect a replacement cost new of about $10,000 per each apartment unit and $15,000 per each health care bed (total of about $3,290,000 FF&E cost new for 248 total units/beds; the 114 unit apartment expansion available in August, 2007 [did] not have a material depreciation as of October 1, 2007). This is the value of the personal property as if new." (Plaintiff's Exhibit 1, p. 142.)

Boehm then proceeded to depreciate the personal property by 50% as of October 1, 2007, based upon a ten-year estimated useful life resulting in a value of $1,645,000 "plus the $1,140,000 cost new for the expansion apartments (114 units x $10,000/unit), or $2,785,000 . . . rounded to $2,775,000." (Plaintiff's Exhibit 1, p. 142.) It is difficult to accept Boehm's conclusion that the FF&E depreciated 50% during the first year of acquisition for that portion of Meadow Ridge operating as of October 1, 2007. See General Statutes § 12-63, which provides specific percentages of depreciated value over a period of years that are inconsistent with Boehm's application of a 50% broad brush stroke.

The portion of the going concern value related to the business value of $16,350,000

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Pursuant to General Statutes § 12-40, Meadow Ridge was required to "bring in a declaration of the taxable personal property belonging to [it] on the first day of October in that year in accordance with [§] 12-42 and the taxable personal property for which a declaration is required in accordance with [§] 12-43."

comes from a method which Boehm claims to be widely accepted. This method compares Meadow Ridge's ongoing cash flows based on actual occupancy to an estimated value as if it were hypothetically empty as of October 1, 2007. Boehm's approach is based on the theory that on the exact date that the property is physically completed but vacant, only real estate value exists – no substantial business value has yet been created. See plaintiff's Exhibit 1, p. 143. The subtraction of opening day value of $51,475,000 from Meadow Ridge's discounted value of total ongoing cash flows of $67,825,000 (over 11 years) results in a business value of $16,350,000. See plaintiff's Exhibit 1, p. 144.

Contrary to Boehm's "widely accepted" method of determining business value, the definition of business enterprise/going concern value includes:

> Real Property;
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> Personal Property (FF&E and machinery);
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> Net Working Capital;
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> Cash and cash equivalents such as inventory and supplies that must be on hand to operate the business less short term debt, accounts payable and accrued assets.
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> Intangible Property which is made up of (1) contracts, (2) name (goodwill), (3) patents, (4) copyrights, (5) an assembled workforce, (6) management team (7) cash, (8) computer software, (9) operating manuals and procedures and (10) other residual intangibles.

See The Appraisal of Real Estate (12^{th} Ed. 2001) p. 642.

Considering the above definition of business enterprise/going concern value, clearly the valuation portion of a going concern dealing with "business value" is more complicated than what Boehm reported. As an example, on the revaluation date of October 1, 2007, Meadow Ridge was in full operation which would have required a complete work force of maintenance and food service personnel as well as medical staffing for the assisted living and skilled nursing units. Certainly, a buyer of Meadow Ridge would want to acquire a skilled work force that was in existence and operating as part of the going concern value at the time of sale. In addition, a highly skilled and efficient management team, as noted in the Appraisal of Real Estate (12th Ed. 2001) p. 642, cannot be ignored as a valuable asset in the purchase of a CCRC.

Turning back to the revenue cash flow stream Boehm used for his projection under the DCF process, Boehm considered four components of revenue:

> 1) Initial or first generation entry fee receipts for all 77 retirement apartment units which had yet to be occupied as of October 1, 2007 (31 of which were sold and 46 of which were available for sale);
>
> 2) Net annual turnover entry fee receipts for all retirement apartments units;
>
> 3) Annual operating cash inflows, including monthly fees, supervision fees, care component revenues and other income;
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> 4) Annual operating cash outflows, including all operating expenses, management fees and replacement reserves.

See plaintiff's Exhibit 1, p. 107.

As of October 1, 2007, there were 261 sold and occupied apartment units generating a gross fee pool of $126,929,750 based on average entry fees of $486,321. As of October 1, 2007, there were 31 sold but not occupied apartment units generating a gross fee pool of $16,714,302 based on average entry fees of $540,042. As of October 1, 2007, there were 46 apartment units that were available for sale generating a potential gross fee pool of $28,007,422 based on average projected entry fees of $615,107. See plaintiff's Exhibit 1, p. 108.[7]

The revenue cash flow derived from the initial or first generation entry fees is difficult to define. In a sense, the payment of the entry fee allows the resident to remain at the CCRC for life, first living in the independent living unit, moving to the assisted living unit as needed and finally staying at the skilled nursing facility as the resident's health declines. However, 85% of the entry fee is subject to being refunded to the resident (or the heirs if the resident dies), voluntarily withdraws or is permanently residing in the assisted living unit or the skilled nursing facility. While the CCRC is in possession of the entry fee, it may treat the returnable portion of the entry fee as an unsecured, non-interest bearing loan, not as rental income. As noted in the plaintiff's 11/1/10 brief, p. 25, "[t]he Town must concede that the residents at Meadow Ridge have no lease or fee interest in the subject property and that they cannot transfer their residency contracts." This kind of concession abrogates any claim that the first generation entry fees had anything to do with income derived from the use of real estate.

From the owner's standpoint, the owner will refund the resident's loan by turning over the vacated independent living unit to a new resident who will pay a new entry fee, with

[7] The gross fee pool resulted from the multiplication of the total number of units by the average entry fees.

the owner keeping 15% of the original entry fee. Under this arrangement, it will be assumed that the market for an independent living unit will have increased the value of the unit so that the new resident's entry fee will be higher than that of the original entry fee.

Under the present arrangement, the owner receiving the first entry fee is free to use these funds to pay off construction costs or any other use[8] so that the existence of these funds become subject to the unrestricted use of the owner. In effect, the entry fee becomes the property of the owner and the owner has incurred a debt to the first entry resident to the extent of 85% of the entry fee to be refunded. This entry fee, which Boehm considers as income to Meadow Ridge, is the basis for determining the net operating income under the income approach. This is then capitalized to arrive at the value of the going concern.

Although Boehm acknowledged that "[t]he Income Approach is based upon the economic principle that the value of a property capable of producing real estate income is the present worth of anticipated future net benefits" (Plaintiff's Exhibit 1, p. 98), the future benefits Boehm used were not derived from rental income attributed to the real estate. Boehm's valuation process was based upon entry fees and operational revenues. The plaintiff's income did not consist of rents but were ongoing unit turnovers and operational revenues which produced "ongoing cash flow streams, as of October 1, 2007 of $67,820,099, rounded to $67,825,000." (Plaintiff's Exhibit 1, p. 135.)

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David Reis, a managing member of Meadow Ridge, testified that the first generation entry fees were used to pay construction loans and costs of the development.

The substance of Boehm's appraisal is that he determined the value of Meadow Ridge's business, not the value of the real estate which formed the underpinnings of the business. The plaintiff emphasized this point in its 11/1/10 brief, pp. 4-5: "Under the Meadow Ridge continuing care contract, a resident does not acquire a leasehold interest or an ownership interest in the real property or the unit. Indeed, under the applicable regulations, a contrary arrangement would not be considered a 'continuing care contract.' The rights acquired by the resident under the continuing care contract have no 'market' value in that they are not transferable. . . . Simply stated, Meadow Ridge is a sophisticated and complex business in which the intangible elements of the business including management, staff expertise, resident care and compliance with detailed state regulations make up a substantial portion of the value of the enterprise. Meadow Ridge is much more than a parcel of land with several buildings. Any appraisal must take into account this complex business operation separate and apart from its real estate." (Citations omitted.)

As previously noted above, Boehm rejected the use of the cost approach and the plaintiff maintains in its reply brief , p. 8, that "buyers and sellers rely exclusively on the income approach to establish fair market value." Boehm further noted that "it is impossible for an October 2007 valuation of the subject using a Cost Approach analysis to even theoretically equal an Income Approach analysis (which is the basis for estimating market value)." (Plaintiff's Exhibit 1, p. 96.)

Boehm's rejection of the cost approach is based on his reasoning that a purchaser of the CCRC would consider only the going concern value. This is contrary to what the assessor seeks to do – determining the value of the real estate for the purpose of taxation, not the value of the CCRC as a business.[9]

"In the cost approach, the appraiser compares the cost to develop a new property or a substitute property with the same utility as the subject property." The Appraisal of Real Estate (12th Ed. 2001), p. 349. "The principle of substitution is basic to the cost approach. [It] affirms that a prudent buyer would pay no more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay." Id., 350.

Given this principle, a purchaser of the subject property on October 1, 2007 would consider purchasing similar land and constructing similar buildings prior to commencing the operation of a CCRC. This appears to be the process Boehm used in developing the value of the subject's intangibles via the going concern value method.[10] However, this concept fails to recognize that Meadow Ridge, on October 1, 2007, obtained zoning approval and building permits to construct the complex, commenced landscaping and parking details, formed a

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[9] The defendant similarly observed that "[t]he crucial problem with this analysis is that the CCRC buyer and seller are transacting something other than what the assessor must value . . . .They are buying the business – of which the real estate is one important component." (Emphasis in original.) (Defendant's reply brief, pp. 1-2.)

[10] Boehm concluded that the real estate value of Meadow Ridge on October 1, 2007 was $89,100,000, not the $51,475,000 figure he used to extract out the intangibles value. See plaintiff's Exhibit 1, p. 144.

management team and engaged a skilled workforce. All these components would have enhanced the value of the real estate beyond being just brick and mortar. These intangibles, existing on October 1, 2007, are so intertwined with the real estate so as to enhance its value. See, e.g., Zurn v. City of St. Albans, 980 A.2d 795, 798 (Vt. 2009).

From the facts previously developed, the plaintiff purchased the land containing approximately 134 acres in 1998 for $5,500,000 and constructed the improvements on the land covering a period from 2001 to 2007 at a total cost of approximately $175,000,000. Mr. Reis, the plaintiff's managing member, testified that the CCRC's original builder walked off the job and delayed construction by 2 years which added $30,000,000 (included in the cost of construction finalized at $175,000,000). Deducting this $30,000,000 over-expenditure, the total cost would be $145,000,000. However, this amount does not take into consideration the depreciation of the physical improvements of the real estate component of a going concern which, when quantified, could present an obstacle to determining a final conclusion of value. See The Appraisal of Real Estate (12th Ed. 2001) p. 643.

In the present case, construction commenced in Fall 1998 for Phase I units and these units were ready for occupation in October 2001. Phase II units were ready for occupation in October 2007. The difficulty here with quantifying the extent of depreciation, whether physical, functional, and/or external, is that neither of the appraisers, Boehm or Tellatin, considered the cost approach in their appraisal of the subject real estate. See The Appraisal of Real Estate (12th Ed. 2001) p. 363.

In the final analysis, the court is presented with the plaintiff's appraiser, Boehm, who determined that the value of the Meadow Ridge real estate, as of October 1, 2007, was $89,100,000, as an extraction from a finding of the total value of the going concern at $108,225,000. Boehm's real estate value of $89,100,00 is approximately 82% of the CCRC's total value. Following this same process, the business value of the CCRC would be, at $16,350,000, approximately 15% of the total value of the going concern.

CONCLUSION

The key issue in this case, as stated above, is whether the plaintiff has been aggrieved by the town assessor's action in that, as claimed by the plaintiff, the assessor's valuation of the subject real estate, as of October 1, 2007, was higher than its fair market value pursuant to §§ 12-63 (a) and 12-64 (a).

Although the issue in a § 12-117a appeal is the fair market value of the real estate, plaintiff's appraiser, Boehm, approached the valuation of the subject's real estate by first determining the value of Meadow Ridge, as a going business, using the income approach. Boehm theorized that the total business value of Meadow Ridge consisted of three parts: real estate, FF&E and business value as an intangible. Boehm then proceeded to put a value on the FF& E and the business value deducting these two sums from the total business value to arrive at what he considered to be the value of the real estate using the income approach.

Although Boehm contends that using the going concern valuation method was an acceptable approach to value the Meadow Ridge real estate, the court in Abington, LLC v.

Avon, 101 Conn. App. 709, 711 n.4, 922 A.2d 1148 (2007), noted that appraisers use three generally accepted approaches of valuation (market sales, cost and income.) The court cannot find any authority accepting the going concern valuation method as an acceptable appraisal method to value the real estate portion of a business. As an example, and consistent with this view, the court in Merle Hay Mall v. Board of Review, 564 NW.2d 419, 424 (Ia. 1997), noted that "[t]he business enterprise value theory is not a generally recognized appraisal method." The Merle Hay Mall court further stated as follows:

"It is undisputed that this method was designed in the late 1980s by a group of shopping mall owners in cooperation with real estate appraisers and real estate professors in a group called 'SCAN' (shopping center assessment network). The need for such a project, according to some evidence, was exacerbated by a dramatic rise in the sale prices of shopping malls.

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"Further, the business enterprise value concept seems to be used almost exclusively in tax assessment cases[.] . . . Apparently, no assessor in Iowa applies this theory, and there is no uniformly accepted methodology to do so."

Id., 424-25.

Boehm used an appraisal method that is not generally accepted to value the plaintiff's real estate for assessment purposes. In addition, the valuation of the intangible business value, as determined by Boehm, was not credible because no other evidence –

besides Boehm's own representations – was offered in order for the court to conclude that it was reasonably probable to quantify such an intangible as business value.

In summary, Meadow Ridge, as a CCRC, is a sophisticated and complex business. Its business is not just real estate; it contains the operation and maintenance of three types of elderly housing, provides food service operations, medical support staff, maintenance and landscape staff. All of these parts rely on working capital, a skilled and trained staff as well as a professional work force, good will and most importantly, a skilled management team.

The court cannot accept Boehm's simplistic formula to determine business value. Imaginative or speculative value has no place in the assessment process used to determine the fair market value of real estate. See Robinson v. Westport, 222 Conn. 402, 409, 610 A.2d 611 (1992). For these reasons, the court has given little weight to Boehm's process in computing the value of Meadow Ridge's intangible business. See, e.g., United Technologies Corp. v. East Windsor, supra, 262 Conn. 26.

As noted in Ireland v. Wethersfield, supra, 242 Conn. 557-58, "[i]f the trial court finds that the taxpayer has failed to meet his burden because, for example, the court finds unpersuasive the method of valuation espoused by the taxpayer's appraiser, the trial court may render judgment for the town on that basis alone."

As discussed above, Boehm's going concern method to value the business as a whole, rather than value the real estate separately, is not a credible method of appraisal.

Accordingly, the court is unable to find that the plaintiff is aggrieved based upon the evidence presented at trial. As a result, the plaintiff's appeal pursuant to § 12-117a is denied. As the court also finds no evidentiary support for the plaintiff's appeal pursuant to § 12-119, this claim is also denied. No costs are awarded to the parties.

Arnold W. Aronson
Judge Trial Referee