NO. CV 09 4016844S	:	SUPERIOR COURT
FAIRFIELD MERRITTVIEW LP AND FAIRFIELD MERRITTVIEW SPE, LLC		JUDICIAL DISTRICT OF
v.	:	STAMFORD/NORWALK
	:	AT STAMFORD
CITY OF NORWALK, ET AL.	:	AUGUST 6, 2012

MEMORANDUM OF DECISION

This is a real estate tax appeal taken by the plaintiffs Fairfield Merrittview, LP and Fairfield Merrittview SPE, LLC[1], as owners of an office building located at 383 Main Avenue in the city of Norwalk (city) for the revaluation date of October 1, 2008. The city's assessor valued the subject property as of October 1, 2008 at $49,036,800. See plaintiffs' Exhibit 9.

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1 The amended complaint alleges two owners of the subject property, Fairfield Merrittview, LP and Fairfield Merrittview SPE, LLC. Both appraisers recite that the owner of the subject property is Fairfield Merrittview, LP. See plaintiffs' Exhibit 11, p. 2 ("As of 10/1/2008[,] the owner is Fairfield Merrittview, LP. There have been no transfers of the subject within the last five years."); defendant's Exhibit A, p. 3 ("The title to the property is currently vested in the name of Fairfield Merrittview, LP. There have been no transfers of the property within the five years preceding the date of valuation.") Plaintiffs' Exhibit 1 is a copy of a deed from PTM Realty, Inc. to Fairfield Merrittview, LP, dated October 20, 1994, which is recorded in the city land records. Plaintiffs' Exhibit 2 is a copy of a deed from Fairfield Merrittview, LP to Fairfield Merrittview SPE, LLC, dated June 7, 2007, which is recorded in the city land records.

In its 4/24/12 post-trial brief, the city argues that the plaintiffs have failed to prove ownership of the subject property both at the time when the suit was commenced or as of the date of revaluation. Therefore, it claims that the plaintiffs have failed to prove standing to maintain this appeal.

In order to maintain an appeal pursuant to General Statutes § 12-117a, the complainant must be a record owner of the subject property in order to claim aggrievement by the assessor's action. See Megin v. New Milford, 125 Conn. App. 35, 40, 6 A.3d 1176 (2010). The city questions whether or not the plaintiffs are aggrieved for the purposes of this appeal.

"It is axiomatic that aggrievement is a basic requirement of standing, just as standing is a fundamental requirement of jurisdiction. If a party is found to lack [aggrievement], the court is without subject matter jurisdiction to determine the cause." (Internal quotation marks omitted.) Soracco v. Williams Scotsman, Inc., 292 Conn. 86, 91, 971 A.2d 1 (2009).

The deed from Fairfield Merrittview, LP to Fairfield Merrittview SPE, LLC, dated June 7, 2007 (see plaintiffs' Exhibit 2), supports the amended appeal (dated August 7, 2009) brought under both the names of Fairfield Merrittview, LP and Fairfield Merrittview SPE, LLC.

As of October 1, 2008, at least one of the two plaintiffs named in the amended complaint was the record owner of the subject which is sufficient to provide standing to maintain this appeal.

The plaintiffs' appraiser, Eric D. Michel (Michel), is of the opinion that the fair market value of the subject property, as of October 1, 2008, was $30,500,000. See plaintiffs' Exhibit 11, p. 27. The city's appraiser, Michael Fazio (Fazio), is of the opinion that the fair market value of the subject property, as of October 1, 2008, was $49,400,000. See defendant's Exhibit A.

The subject property consists of an eight-story Class A multi-tenant office complex including a 10,000 SF penthouse[2] on the top floor. The subject was constructed in 1985 on 4.3 acres of land that runs from the west side of Main Avenue to the Norwalk River. The ground floor of the subject building contains a lobby, a cafeteria operated by a vendor, a fitness area and a conference room of approximately 6,400 square feet (SF) for the benefit of the building's tenants. See defendant's Exhibit A, pp. 13-14. There are four elevators plus a private elevator serving the penthouse from the seventh floor.

The subject is located on Main Avenue, just south of the intersection with the Merritt Parkway. Main Avenue is a four-lane major north/south highway with a signalized access to the subject from the northerly direction. See defendant's Exhibit A,

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Neither the parties nor the appraisers treated the penthouse as part of the subject for purposes of this appeal.

p. 12. The Route 7 connector highway, which provides access to I-95, is approximately ½ mile north of the subject.

The subject is in an area of high density commercial development with a mix of retail and corporate offices. The area includes the Merritt 7 Class A office complex made up of nine buildings containing 1.75 million SF. Across the street from the subject is a 130,000-SF shopping center anchored by a grocery store. See defendant's Exhibit A, p. 12. The subject is also located near the Metro-North passenger train station with service to Stamford and Manhattan.

There is an under building parking structure with three levels as well as parking on the plaza level. The parking garage contains 150,227 SF and accommodates 743 parking spaces. See plaintiffs' Exhibit 11, p. 2.

Both of the appraisers Michel and Fazio disagree on the net rentable area (NRA) of the subject building. The following is an example of the disparity in square footage:

Michel contends that the subject has a total of 238,879 SF of NRA. See plaintiffs' Exhibit 11, pp. 2, 9, 11, 14.[3]

On the other hand, Fazio contends that the subject has NRA of 256,974 SF. See defendant's Exhibit A, p. 13.

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The assessor's card, plaintiffs' Exhibit 9, lists the NRA at 238,879 SF. In their brief, the plaintiffs maintain that the subject's NRA is approximately 238,878 SF. See plaintiffs' 4/24/12 post-trial brief, p. 2.

The plaintiffs supplied to the city's assessor the subject's rent roll, as of January 1, 2007, in which the plaintiffs reported having NRA of 249,986 SF. See plaintiffs' Exhibit 4. In the rent roll as of December 19, 2007, the plaintiffs reported NRA of 260,147 SF. See plaintiffs' Exhibit 5. In the rent roll as of December 24, 2008, the plaintiffs reported NRA of 264,673 SF. See plaintiffs' Exhibit 6.

It is more credible to turn to the 2006 annual income and expense report filed by Fairfield Merrittview, LP with the city's assessor, as required by General Statutes § 12-63c, showing the subject's gross square footage at 249,986 SF and NRA at 243,586 SF. See plaintiffs' Exhibit 7.

Both appraisers agree on several factors:

1) that the subject's highest and best use, as improved, is for its continued use as a multi-tenant office building[4];

2) that the sales approach and the income approach be employed to arrive at the appraisers' respective opinions of the subject's fair market value, as of October 1, 2008;

3) that the direct capitalization method should be employed in the use of the income approach.[5]

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See plaintiffs' Exhibit 11, p. 10; defendant's Exhibit A, p. 18.

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"Direct capitalization is a method used in the income capitalization approach to convert a single year's income expectancy into a value indication. This conversion is accomplished in one step, either by dividing the income estimate by an appropriate income rate or by multiplying it by an appropriate income factor." The Appraisal of Real Estate (12th Ed. 2001) p. 529.

Michel, using the sales approach based on four sales of office buildings in the Stamford-Norwalk area, arrived at NRA of $125/SF. This resulted in his determination of a fair market value of $29,859,875 (rounded to $29,900,000). See plaintiffs' Exhibit 11, p. 14.

Using the income approach, Michel relied on rental income from seven office buildings in the Norwalk market and the subject's leasing history to establish an annual market rent of $25/SF on a gross plus electric basis. See plaintiffs' Exhibit 11, p. 17.

Michel arrived at a potential gross revenue of $5,971,975 (NRA of 238,879 SF multiplied by $25/SF of market rent) from which he deducted a vacancy/collection loss of 10% (or $597,198) to arrive at an effective gross income (EGI) of $5,374,778. Michel next developed his total expenses for the subject building at $2,675,445 which he deducted from EGI to arrive at a net operating income (NOI) of $2,699,333. See plaintiffs' Exhibit 11, p. 18.

Using an overall capitalization rate of 8.85%, Michel determined that the fair market value of the subject property, using the income approach, was $30,500,000, as of October 1, 2008. See plaintiffs' Exhibit 11, p. 26. Michel gave the most weight to the income approach to value because it was his opinion that most purchasers would use this approach. Id.

Using the sales approach, the city's appraiser Fazio relied on three office building sales with two located in Norwalk and one in Stamford. Both appraisers relied on 800 Connecticut Avenue in Norwalk as a comparable sale. Considering the price per square foot range of his three sales, Fazio arrived at NRA of $210/SF. Therefore, Fazio determined that the fair market value of the subject using the sales approach was $53,964,540 (rounded to $54,000,000) based on NRA of 256,974 SF. See defendant's Exhibit A, p. 30.

Turning to the income approach, Fazio concluded that the fair market value of the subject property, as of October 1, 2008, was $49,400,000. Fazio relied on the selection of three leases to establish what he considered to be the current market rent. Fazio noted that "[a]fter considering the recent leases signed at the subject property as well as prevailing rental rates [in] the market area, a market rental rate of $25.00/SF plus reimbursements for electric consumption and increases in operating expenses and property taxes is concluded." (Defendant's Exhibit A, p. 32.)

Using what Fazio determined to be the subject's NRA at 256,974 SF, Fazio arrived at an annual rent roll for the subject at $6,424,350. However, contrary to Michel, Fazio also added a utility reimbursement of $2.15/SF; an expense reimbursement of $2.65/SF and other income of $190,000, to arrive at a potential gross income of $7,847,825. See defendant's Exhibit A, pp. 33, 36.

Fazio deducted a vacancy/collection loss of 10% (or $784,783) from his potential gross income to arrive at EGI of $7,063,043. Arriving at the total operating expenses of the subject at $2,672,000, Fazio deducted this amount from his EGI of $7,063,043 which resulted in NOI of $4,391,043. See defendant's Exhibit A, p. 36. Using an overall capitalization rate of 8.89%, Fazio concluded that the fair market value of the subject, as of October 1, 2008, was $49,393,056 (rounded to $49,400,000). See id.

There are key similarities between the appraisers in their analyses. In developing their respective opinions of value using the income approach, both appraisers concluded as follows:

1) that the market rentals for similar properties, as of October 1, 2008, were $25/SF;

2) that the vacancy and collection loss was 10%;

3) that the capitalization rate, as of October 1, 2008, was 7.50%, with each adding a tax rate (Fazio at 1.39% and Michel at 1.35%).

Similar to Michel, Fazio also noted that "[i]n the final reconciliation of value, the income approach was given more consideration as it more accurately reflects the motivations of a typical purchaser." (Defendant's Exhibit A, p. 37.)

Since both appraisers agree that the income approach is the most desirable method for determining the subject's fair market value as of the revaluation date of October 1, 2008, and recognizing the similar factors arrived at by both, the resolution of the issue of valuation turns upon an analysis of the appraisers' opinions of market rent and contract rent to reach a fair market rent for the subject, as of October 1, 2008.

Fazio considered the contract rent for the subject with the following comment: "According to the most recent rent roll provided by ownership, rental rates for the subject range from $24 to $35/SF, plus reimbursements for increases in operating expenses and property taxes over the base year of the lease. The blended base rental rate per the 2007 rent roll is $26.02/SF." (Defendant's Exhibit A, p. 31.)

Fazio further addressed the market rent for the subject by considering the recent leases of three tenants: The Fairfield Community Foundation, Inc., Nestle Holdings, Inc. and Reed Elsevier, Inc., with base rents ranging from $24/SF to $29.75/SF, as an indication of market rent. See defendant's Exhibit A, p. 32.

Michel, on the other hand, concluded that market rent for the subject, after considering seven comparable leases, ranged from "$18.25/SF, net to $25.62/SF, gross plus electric." (Plaintiffs' Exhibit 11, p. 15.) Michel was of the opinion that, after considering his finding of market rent and the subject's leasing history, that the subject's market rent, as of October 1, 2008, would be $25/SF on a gross plus electric basis. See plaintiffs' Exhibit 11, p. 17. However, Michel noted that, as to existing leases, the annual rental rate is $26/SF, gross plus electric. See plaintiffs' Exhibit 11, p. 15.

After reviewing Michel's and Fazio's opinions as to their determinations of the subject's market rent and contract rent, the court concludes that $26/SF[6] is a fair resolution of the subject's potential gross income, as of October 1, 2008.

The court arrives at a potential gross income of $6,333,236 by multiplying $26/SF with NRA of 243,586 SF. Deducting both the 10% vacancy collection factor of $633,324 and net operating expenses as found by Fazio at $2,672,000, results in NOI of $3,027,912.

Taking NOI of $3,027,912 divided by an overall capitalization rate of 8.89% results in the court finding that the subject's fair market value, as of October 1, 2008, was $34,059,753.

Accordingly, as the fair market value of $34,059,753 is less than the city's fair market value for the revaluation date of October 1, 2008, judgment may enter in favor of the plaintiffs, sustaining their appeal, without costs to any party. Furthermore, the plaintiffs' request for an award of interest and costs is denied.

Arnold W. Aronson
Judge Trial Referee

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This figure excludes Michel's price/SF on a gross plus electric basis and Fazio's reimbursement calculations.