NO. CV 09 4017021S	:	SUPERIOR COURT
MACK-CALI REALTY, LIMITED PARTNERSHIP	:	JUDICIAL DISTRICT
v.	: :	STAMFORD/NORWALK AT STAMFORD
CITY OF NORWALK	:	MARCH 8, 2013

MEMORANDUM OF DECISION

Pursuant to General Statutes § 12-117a[1], the plaintiff, Mack-Cali Realty L.P. (Mack-Cali), brings this action challenging the valuation placed upon its property for assessment purposes for the revaluation year of October 1, 2008. The subject property is located at 40 Richards Avenue in the city of Norwalk (city).

The city's assessor valued the subject property at $16,789,300 as of October 1, 2008. The plaintiff's appraiser, Michael McGuire (McGuire), valued the subject property at $13,200,000.

During the course of the trial on the issue of valuation, the plaintiff presented its appraiser McGuire to substantiate its claim that the valuation placed upon the subject property by the assessor was excessive, and therefore, the valuation caused the plaintiff to be an aggrieved party.

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In its November 14, 2012 brief, p. 2, the plaintiff relinquished its claim under General Statutes § 12-119.

The city did not offer the opinion of an appraiser to support its valuation, nor was it required to do so. In a tax appeal, it is the burden of the plaintiff to support its claim that the assessor has overvalued its property, not the burden of the city to justify its valuation. See Ireland v. Wethersfield, 242 Conn. 550, 557-58, 698 A.2d 888 (1997). "A taxpayer who carries his burden of establishing overvaluation is entitled to plenary judicial relief under § 12-117a. A taxpayer, however, who fails to carry this burden has no right to complain if the trial court accords controlling weight to the assessor's valuation of his property." Id., 559.

The subject property is a Class B, multi-tenant, six-story office building set on 1.39 acres of land. It was constructed in 1985 with a concrete and glass exterior. There is a penthouse level and a structured parking garage.

The subject is located in the westernmost part of the city on the easterly side of Richards Avenue, between Connecticut Avenue, also known as U.S. Route 1, and Interstate I-95, near the Darien town line. Route 1 is the primary commercial corridor in the area. There are various commercial and retail uses in the surrounding area, including shopping centers, standalone restaurants and residential developments.

McGuire notes that "[t]he building is designed around a central core of elevators, stairwells, restrooms, and electrical/maintenance closets. Primary access is via the main entrance with a double entry lobby at the northwest corner of the building. Additional access is via the east side of the building from the parking deck. Building mechanical systems, as well as security, maintenance, and loading facilities, are located on the lower level. The lower level features a two-story atrium open to the second level. It also features a small deli with seating in the atrium area. The upper floors are generally laid out with partitioned offices along the perimeter. . . . The building is fully sprinklered. As noted, parking is available in the structured parking garage. According to the survey, the garage can accommodate a total of 403 cars." (Plaintiff's Exhibit 1, p. 26.)

According to the plaintiff's rent roll, the subject office building has a total net rentable area (NRA) of 146,615 square feet (SF).[2]

As of the last revaluation date of October 1, 2008, the subject property was 76% leased. McGuire noted that the subject, built in 1985, reflected the office market of the 1980s. However, McGuire reported that there was a dramatic shift in the location of office buildings, with most corporate offices moving in a southerly direction. Of particular note is McGuire's description of the Norwalk area:

"Norwalk is a diversified community of residential waterfront and suburban neighborhoods with retail and commercial development lying along the major

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McGuire notes that "[t]he assessor's records indicate a smaller building area of 135,225 [SF]. It appears that the first floor of the building is included in the garage square footage of 100,600 [SF] rather than the building area." (Plaintiff's Exhibit 1, p. 7.) It is more credible to use an NRA figure of 146,615 SF since it is based on an examination of the plaintiff's rent role.

thoroughfares. The Norwalk Chamber of Commerce defines the Greater Norwalk Economic Area as including Darien, New Canaan, Norwalk, Weston, Westport and Wilton. This area was ranked in a 1994 *Money Magazine* article as the best place to live in the Northeast. Greater Norwalk covers an area of 130 square miles and has a population estimate of 166,330 people." (Plaintiff's Exhibit 1, p. 16.)

Reviewing the Norwalk market, McGuire concluded that "[d]espite the financial crisis, the Norwalk real estate market continues to perform well, particularly the Class B office market with declining vacancy rates and stable asking rental rates. As noted, the Class A segment has been more volatile than the Class B segment, but nonetheless, maintains high rental rates and relatively low vacancy rates. Going forward, as the more affordable option for quality office space, the Class B market should continue to perform relatively well." (Plaintiff's Exhibit 1, p. 22.)

Although the office market in 2007 was strong, McGuire noted that the office market in 2008 was slowing down. This indicates that risks were developing in the office market.

In considering the value of the subject property in 2008, McGuire concluded that appraisers try to mirror the market when determining what investors look for. From this standpoint, McGuire reported that typical buyers would utilize the income approach, namely, the discounted cash flow (DCF) and the direct capitalization (DC) methods to determine present market value.

Using the DCF method, McGuire determined that investors customarily look at a ten-year period to forecast net operating income (NOI). McGuire further noted that "[t]his projection is then utilized to determine a purchase price that will justify the degree of risk inherent in the proposed investment." (Plaintiff's Exhibit 1, p. 35.)

In the process of developing the subject's market rent, McGuire surveyed market rent in twelve office buildings in the Norwalk area. These office buildings had lease terms ranging from two to seven years, with five years being the most common. McGuire determined that market rents ranged from $12.66 to $25.20/SF, varying based on the expense basis, location, physical features of the space, and size of the units. See plaintiff's Exhibit 1, p. 38.

McGuire then turned to the subject's contract rent and reviewed the subject's rent roll, as of October 2008. McGuire found that the subject's contract rental rates as of October 2008 ranged from $12.00 to $28.50/SF on a gross basis. See plaintiff's Exhibit 1, p. 41. McGuire further noted that "[w]ith new leases averaging approximately $25.00/SF, they are considered to be in line with market rents for larger Class B office buildings. . . . For the discounted cash flow analysis, we have utilized a market rent of $25.00/SF on a gross basis." Id.

Turning to McGuire's consideration of a capitalization rate, McGuire considered three factors in arriving at an overall going-in capitalization rate:

(1) Mortgage/Equity Analysis resulting in a capitalization rate of 8.53%. See plaintiff's Exhibit 1, p. 48.

(2) Korpacz Real Estate Investor Survey providing survey data that was reflective of going-in capitalization rates for institutional and non-institutional investors. McGuire used this data to calculate that the subject's capitalization rate was between 8% to 8.50%. See id., pp. 48-49.

(3) McGuire did not develop market derived rates for the following reason:

> "Given the changing market conditions, derivation of capitalization rates from historical sales is of limited reliability. In the past few years, capitalization rates steadily declined due to the availability of capital in the market. However, as indicated by the Korpacz data, capitalization rates have begun to rise due to changing market fundamentals. The selection of a capitalization rate via this method is further complicated by the fact that transaction volume for stabilized properties has come to a virtual standstill."

(Plaintiff's Exhibit 1, p. 49.)

Considering the mortgage/equity analysis and the Korpacz Survey, McGuire opined that a capitalization rate of 8.50% should be used for the subject reflecting its location and physical features, as well as the current economic conditions. See plaintiff's Exhibit 1, p. 50.

Since McGuire excluded real estate taxes from the stabilized operating pro-forma, McGuire accounted for this expense by loading the going-in capitalization rate of 8.50% based on the effective tax rate for the city. The calculation of an effective tax rate of

0.013888 is a result of multiplying the 2008 mill rate of 0.01984 by the assessed ratio of 70%. Adding the effective tax rate to the capitalization rate of 8.50% results in an effective tax-loaded capitalization rate of 9.89%. See id.

McGuire utilized the “Argus” software system to input all of the data he selected to arrive at values that he described as follows:

“Prospective Present Value Cash Flow Before Debt Service plus Property Resale Discounted Annually (Endpoint on Cash Flow & Resale) over a 10-Year Period.” (Plaintiff’s Exhibit 1, p. 54.)

This DCF analysis resulted in a (rounded) range of present value of cash flow as follows:

$14,100,000 (discount rate of 10.39%);

$13,200,000 (discount rate of 11.39%) and

$12,400,000 (discount rate of 12.39%).

See plaintiff’s Exhibit 1, p. 54.

McGuire selected the middle ground of the DCF, concluding that under this method, the fair market value of the subject, as of October 1, 2008, was $13,200,000.

McGuire also considered the DC analysis to determine the value of the subject, as of October 1, 2008. See plaintiff’s Exhibit 1, p. 55. McGuire arrived at NOI of $1,428,344. Utilizing a tax-loaded capitalization rate of 9.89%, McGuire found the indicated value as stabilized to be $14,444,063, from which he deducted capital improvements of $1,006,206[3], to arrive at his final value conclusion of $13,437,857 (rounded to $13,400,000).

In resolving the difference between the values reached under the DCF and DC analyses, McGuire stated as follows:

"As a multitenant office building with numerous long term leases in place, primary reliance was placed on the yield capitalization method as it most accurately reflects the complexities of the subject's cash flow. The indicated as is market value of the subject property via the Income Approach, as of October 1, 2008 is: $13,200,000."
(Plaintiff's Exhibit 1, p. 56.)

As a check on his use of the DCF and DC methods, McGuire also considered the sales comparison approach to value. McGuire's selection of comparable sales and analysis leaves much to be desired. First, McGuire selected nine sales (four in Norwalk, three in Stamford, one in Danbury and one in Wilton) that have serious deficiencies when compared to the subject. For example, two of the sales were vacant buildings and one sale was vacant shortly after the sale. One sale was of a one-half interest, another sale lost a

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The court notes that only $33,206 of the capital improvements for the garage and common area upgrades were planned for 2008. For 2009, a fifth floor restroom renovation costing $100,000 was planned. For 2010, parking garage improvements, HVAC upgrades and fourth floor restroom renovations were planned costing $873,000. See plaintiff's Exhibit 1, p. 55.

major tenant, and yet another sale was purchased in 2006 and foreclosed in 2011.

Furthermore, in comparing the subject to other sales, McGuire reported that the subject building had NRA of 135,225 SF, when under the income approach, he reported that the subject had NRA of 146,615 SF. Using the lower NRA of 135,225 SF, McGuire calculated the subject's stabilized valuation under the sales comparison approach at $14,874,750 (before deductions for capital improvements). However, this value (before deductions for capital improvements) increases to $16,127,650 when NRA of 146,615 SF is calculated. After deductions for capital improvements, McGuire's rounded value was $13,900,000. See plaintiff's Exhibit 1, p. 63 and Exhibit 4.

One other factor involved in McGuire's analysis under both the income approach and the sales comparison approach is that McGuire undertook to value the subject interest as a leased fee interest, not a fee simple interest. General Statutes § 12-64 provides, in relevant part, as follows: "Any interest in real estate shall be set by the assessors in the list of the person in whose name the title to such interest stands on the land records." This language has been interpreted to mean the fee owner. See Montgomery v. Branford, 107 Conn. 697, 701, 142 A. 574 (1928).

McGuire's use of the term "leased fee interest" rather than the term "fee simple" was made in the context of considering income-producing property that was based on rentals as evidenced by leases. See Grossomanides v. Wethersfield, 33 Conn. App. 511, 513-14, 636 A.2d 867 (1994): “Although the appraiser’s use of the term ‘lease fee title’ was unusual and, perhaps, semantically misleading, the report clearly defined that term as meaning nothing more than ‘ownership of the land, improvements, and all of the rights normally acquired by ownership.’ Semantics aside, there is no difference between the definition of ‘lease fee title’ as used in the report and defined therein and the definition of a fee simple estate . . . .”

Semantics aside, there appears to be no difference between McGuire’s use of “leased fee” and “fee simple” in the valuation of the subject property for tax purposes.

Three areas of concern surface when analyzing McGuire’s income approach.

For the DCF analysis, McGuire used a market rent of $25/SF on a gross basis which was based on range of $12.66 to $25.20/SF on a gross basis (with an adjusted range of $16.50 to $29.43/SF) (see plaintiff’s Exhibit 1, p. 38 and Exhibit 2) and contract rent was based on a range of $12.00 to $28.50/SF on a gross basis (see plaintiff’s Exhibit 1, p. 41). McGuire further noted that “[t]he total annual income from the rent roll is currently $2,270,535, or $20.61/SF of occupied office area. With consideration for the higher prevailing market rent of $25/SF, we have utilized a market rent of $22/SF on a gross basis in the direct capitalization method.” Id.

Considering both the contract rent and market rent, and the fact that McGuire opined that the subject Class B office building would maintain a lower vacancy rate and a stable rental rate, it is more credible to find that the combined market and contract rental rate would be $25/SF, whether the DCF or the DC method is used.[4]

The second area of concern is McGuire's use of a vacancy/collection rate of 25%. In McGuire's analysis of the market, he reports that the Class B vacancy rate, as of October 2008, was 9.8%, which was well below the Class A market vacancy rate of 12.8%. See plaintiff's Exhibit 1, p. 42. It would appear that McGuire was influenced in selecting a 25% vacancy/collection rate because the subject had a 24% vacancy rate as of the date of valuation. See plaintiff's Exhibit 1, p. 43.

Considering the vacancy rate of 9.8% for a Class B office market in Norwalk and McGuire's comment (previously noted above) that the Class B market for office space in Norwalk was performing well, the vacancy rate should reflect a lower rate than 25% from the court's standpoint. See plaintiff's Exhibit 1, p. 22.

The third concern is that in using the DC analysis, McGuire deducted capital improvements to the subject in the years 2008, 2009 and 2010. McGuire deducted these

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Plaintiff contends that there are fundamental differences between the use of the DC and DCF methods to justify its appraiser's use of market rent of $22/SF under the DC method and $25/SF under the DCF method. See plaintiff's11/14/12 post-trial brief, p. 11 n.3. For the reasons stated in The Appraisal of Real Estate (12th Ed. 2001) pp. 529-30, the court disagrees. Either the DC or DCF method "may correctly produce a supportable indication of value when based on relevant market information derived from comparable properties . . . . A choice of capitalization method does not produce a different indication of value under this circumstance." Id. "Like [DC], [DCF] should reflect market behavior." Id., 549.

capital improvements from the indicated value as stabilized, $14,444,063, to arrive at a final value of $13,437,857 (rounded to $13,400,000). See plaintiff's Exhibit 1, p. 55. Of the total amount of capital improvements in the amount $1,006,206, only $33,206 of this amount was planned for 2008. See plaintiff's Exhibit 1, p. 27.

It is difficult to accept McGuire's rationalization that capital improvements made subsequent to October 1, 2008 would have an impact on the value of the subject at a time prior to the construction of the capital improvements.

Not having the "Argus" software program, it is difficult for the court to see the effect of an increase in rent at $25/SF and lowering the vacancy rate from 25%.

Of particular note, the city, in its 11/13/12 post-trial brief, p. 32, took McGuire's DC value conclusion of $13,400,000 (see plaintiff's Exhibit 1, p. 55) and modified the calculation by increasing the rent of $22/SF to $25/SF and excluding the $1,006,206 for capital improvements. McGuire's use of a 25% vacancy rate was not modified. With these adjustments, the defendant arrived at an indicated value as stabilized of $17,662,352.

With the assessor's fair market valuation of the subject property, as of October 1, 2008, at $16,789,300, the court can find no justification to find that the assessor's valuation was excessive. On this basis the plaintiff has not shown itself to be an aggrieved party. See Ireland v. Wethersfield, supra.

Accordingly, judgment may enter in favor of the defendant, denying the appeal, without costs to either party.

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Arnold W. Aronson
Judge Trial Referee