NO. CV 10 6006210S	:	SUPERIOR COURT
BRANHAVEN PROPERTIES LLC	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
TOWN OF MONROE	:	NOVEMBER 7, 2011

MEMORANDUM OF DECISION

The plaintiff, Branhaven Properties, LLC (Branhaven) brings this tax appeal challenging the valuation placed upon its real estate located at 731 Main Street (also known as Route 25) in the town of Monroe (town), as of the revaluation year of October 1, 2009.

The subject property is a multi-tenant office complex located on 3.6 acres of land. The office complex, built in 1988, contains 13 rentable units[1] located within eight, two-story wood frame buildings connected by walkways.

Patrick J. Wellspeak (Wellspeak), the town's appraiser, describes the office complex as having 26,640 square feet (SF) of gross building area and 24,480 SF of net rentable area, with the difference in square footage attributed to covered walkways from suite to suite and to two lower-level mechanical areas that support each building. See

1 The plaintiff's appraiser, Alan Budkofsky, testified that the number of units "are really subjective because one tenant may take . . . two floors so that's called one unit, or one floor may be subdivided." See June 27, 2011 trial transcript (Tr.), p. 30.

defendant's Exhibit A, p. 20.

Wellspeak further notes that "[t]he complex is unique in that it includes two buildings that essentially have four sections of two-story space each. The four sections are 40' x 40' blocks but some area is lost where there are walkways between spaces. The result is that spaces are accessed directly from the exterior and are built into the grade of the site. Single floor suites generally range in size from 1,320 [SF] to 1,600 [SF] making them suitable in size for a market which attracts local tenants." (Defendant's Exhibit A, p. 21.)

The plaintiff purchased the subject property on March 31, 2005 for $2,150,000. Wellspeak describes the site's history as follows: "While market conditions initially improved between the 2005 date of sale and the first half of 2007, they then deteriorated with the overall economy. Furthermore, the property owners financed out of the asset when they obtained a $2,650,000 note with TD Bank in November of 2007 with an initial advance of $2,160,000. In general, it is our opinion that 2005 values were higher than those attainable in 2009 and the subject property was negatively impacted by a loss in occupancy leading up to the revaluation date due to the movement of tenants to other locations. Also, there was potentially less management attention as the property became worth less than the outstanding mortgage balance." (Defendant's Exhibit A, p. 2.)

The plaintiff's appraiser, Alan Budkofsky (Budkofsky), considering only the income approach to value, concluded that the fair market value of the subject office complex, as of October 1, 2009, was $1,000,000.

Wellspeak, after considering the market sales approach and the income approach, concluded that the fair market value of the subject office complex, as of October 1, 2009, was $1,800,000.[2]

The town's assessor had previously determined that the fair market value of the subject office complex, as of October 1, 2009, was $2,554,914 (assessed value of $1,788,440). The board of assessment appeals (BAA), following an appeal by the plaintiff, reduced the subject's fair market value to $2,412,680 (assessed value of $1,688,880). See defendant's Exhibit A, property card included as Exhibit B to Wellspeak's appraisal.

Wellspeak, considering the market sales approach to value, selected four sales as his comparables. See defendant's Exhibit A, p. 32. Comparable one was a sale of an office park at 388 Main Street in Monroe on June 11, 2009 for $675,000. This sale had a land area of 0.614 acres with a three-story office building built in 1982 containing 13,280 SF of gross building area and 8,884 SF of net rentable area. In contrast to the subject, this sale was in closer proximity to the Trumbull town line and the Merritt Parkway (Route

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Wellspeak arrived at a fair market value of the subject, as of October 1, 2009, using the sales approach at $1,900,000. He considered this amount to be supportive of his finding of value of $1,725,000 using the income approach. See defendant's Exhibit A, p. 39.

15). See Tr., p. 42.

The plaintiff argues that sale one is not comparable to the subject because it is significantly smaller in size. However, as noted by Wellspeak, the importance of sale one is not its size. The fact that sale one had a 45% occupancy rate at the time of sale underscores its importance. This would confirm Wellspeak's opinion that the subject's lack of immediate access to major highways such as I-84 and the Merritt Parkway has a negative impact, which limits the use of the subject's office space to localized small professional and service firms. See defendant's Exhibit A, p. 16.

While Wellspeak recognized that sale one was much smaller than the subject, sale one is comparable to the subject property based on several factors, namely: (1) the same type of tenant mix; (2) sale one was sold in 2009, the year of revaluation; and (3) the distance between the subject and sale one is approximately 1.5 miles.

Wellspeak's sales two and three, although located in Brookfield and Cheshire, Connecticut, had similar-type local tenants with similar rental rate structures. Wellspeak included the subject property's sale in 2005 to the plaintiff as sale four. However, the economy was strikingly different in 2005 than the economy at the revaluation date of 2009.

Since both Budkofsky and Wellspeak placed such emphasis on the income approach, it is helpful to set forth its relevant steps.

"The income capitalization approach consists of the following seven 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 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." Branford v. Santa Barbara, 294 Conn. 785, 793 n.12, 988 A.2d 209 (2010). (Internal quotation marks omitted.)

Except for their figures estimating gross income and the percentage of vacancy and collection loss, both appraisers essentially agreed on the above steps in the process of developing the subject's fair market value. In Budkofsky's appraisal report, plaintiff's Exhibit 1, p. 24, Budkofsky reported a potential gross income of $238,911 which resulted in his finding of a net operating income (NOI) of $111,464.92 and a final value of $1,000,000, based on a capitalization rate of 11.07%. However, Budkofsky testified that the figure of $238,911 for potential gross income was listed in error and that the correct figure was higher at $342,720. See Tr., p. 60. In its brief, p. 16, n.4, the plaintiff noted that "Budkofsky's appraisal, in error, included a line for potential gross income. Budkofsky did not employ the potential gross income in his income capitalization analysis and, accordingly, testified the line had been left in by mistake." (Citations omitted.)

Budkofsky relied on the subject's actual income because he did not find any comparable sales in Monroe. Budkofsky considered actual income to be reasonable as compared to what market income should be. While Budkofsky relied on the actual income that the plaintiff reported, Wellspeak relied on a more detailed approach. Wellspeak considered the actual income of the subject as well as surveyed market rent with brokers in the active market for office space in Monroe.

Wellspeak, in considering the income approach, reviewed the subject's gross rental income as follows:

Year	Gross Rental Income
2005	$215,788
2006	$296,944
2007	$256,941
2008	$238,911

See defendant's Exhibit A, p. 25.

With regard to the gross rental income, Wellspeak noted as follows:

"[T]he 2005 income levels are artificially low due to rollover vacancy and below market rents. Clearly 2006 was the best historic year at the property when only 1,000 [SF] was vacant and the average in place rent approximated $12.65[/SF]. We attribute the 96% occupancy to having rents below market. Likely if rents were [set] to market at approximately $14 to $15[/SF], occupancy would have fallen to 80%.

"Likewise we view the drop off in occupancy in 2008 to be a reflection of an economic decline as well as less attentive management and maintenance at the property. This is typical in a situation where a property is overleveraged and the borrower owes more on an asset than it is worth."

(Defendant's Exhibit A, p. 25.)

After surveying local market rates for office buildings in Monroe and following discussions with active brokers in the market area, Wellspeak concluded that the market rent for the subject was $14.50/SF of net rentable area. See defendant's Exhibit A, p. 26. This market rent figure was based on what brokers informed Wellspeak to be asking rents which, in the real estate field, are usually the top offer subject to negotiation to a lower rent based on concessions.

Recognizing that Budkofsky is at $9.76/SF[3] of net rentable area (which represents the actual income of $238,911 from rent produced by the subject) and Wellspeak is at $14.50/SF of net rentable area (which represents the high end of market rents based on asking versus negotiated rents), the market rent for the subject, as of October 1, 2009, lies

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Calculation of $238,911 divided by $24,480 SF of net rentable area.

somewhere in between.

Given Wellspeak's acknowledgment that the economy in 2009 was weak and that small, local businesses were the typical renters in Monroe and, given the vacancy factor of the subject selected by Budkofsky to be 40% and by Wellspeak to be 20% in 2009, it would appear that the subject, as of October 1, 2009, would support a market rent of $13.50/SF of rentable building area.

Therefore, 24,480 SF of net rentable area at $13.50/SF results in an estimated gross income of $330,480. Deducting a 20% vacancy and collection factor, as used by Wellspeak, in the amount of $66,096, produces an effective gross income of $264,384. Deducting the operating expenses, as found by Budkofsky, at $103,555, results in NOI of $160,829.

Since Budkofsky's finding of a tax-loaded cap rate is 11.07% and Wellspeak's tax-loaded cap rate is 11.10%, the difference being negligible, it is appropriate to divide NOI of $160,829 by a cap rate of 11.10%[4] to arrive at a fair market value of the subject, as of October 1, 2009, at $1,448,910.

Since the court's finding of the subject property's fair market value, as of October 1, 2009, is lower than the value placed upon the subject by the BAA, the plaintiff's appeal

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The plaintiff noted in its brief, pp. 20-21, n.5, that it "does not object to the court's adopting Wellspeak's tax-loaded capitalization rate of 11.10%."

is sustained.

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

Arnold W. Aronson
Judge Trial Referee