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| NO. CV 99 0364371S | : | SUPERIOR COURT |
| C & H ASSOCIATES LIMITED PARTNERSHIP | : | JUDICIAL DISTRICT OF FAIRFIELD |
| V. | : | AT BRIDGEPORT |
| TOWN OF STRATFORD | : | NOVEMBER 7, 2005 |
| NO. CV 01 0385288S | : | SUPERIOR COURT |
| C & H ASSOCIATES LIMITED PARTNERSHIP | : | JUDICIAL DISTRICT OF FAIRFIELD |
| V. | : | AT BRIDGEPORT |
| TOWN OF STRATFORD | : | NOVEMBER 7, 2005 |

**MEMORANDUM OF DECISION**

In the two above entitled tax appeal cases, the plaintiff, C & H Associates Limited Partnership (C & H), challenges the assessor's valuation of its property located at 446-556 Hollister Street in the town of Stratford (town) on the Grand List of October 1, 1998 (hereinafter referenced as the 1999 appeal) and the revaluation date of October 1, 2000 (hereinafter referenced as the 2001 appeal).

The plaintiff presently owns 56 out of 66 condominium units in a three-story building known as Cedar Heights. Cedar Heights, built in 1973 and remodeled in 1988, is located on 2.40 acres of land and includes a basement. The 56 units consist of the

following:

(8) efficiency units at 500 square feet each;
(44) one-bedroom units at 625 square feet each and
(4) two-bedroom units at 750 square feet each.

1999 Appeal

In the 1999 appeal, the plaintiff challenges the assessor's valuation of the following nine units on the October 1, 1998 Grand List:

| Description | Assessor's Valuation |
|---|---|
| (2) Two-bedroom units: A-28, B-21 | $60,000 |
| (4) Efficiency units: C-6, C-8, C-9, C-10 | $45,000 |
| (3) Efficiency units: C-3, C-4, C-7 | $40,000 |

In support of the 1999 appeal, the plaintiff relies upon a 1998 order by Judge Gormley regarding a 1994 appeal (hereinafter the 1994 appeal). The plaintiff filed a tax appeal in 1994 challenging the assessor's valuation of 34 one-bedroom units and 4 efficiency units on the October 1, 1993 Grand List. On October 7, 1998, Judge Gormley ordered that "the appraisal value of each of 38 bedroom condominiums as set forth in counts 1 through 38 to be $45,000.00[.]" Therefore, the plaintiff contends that Judge Gormley's order in 1998 is applicable to and mandates a reduction in the assessment of properties named in the 1999 appeal.

The plaintiff argues that Judge Gormley's order was "grammatically garbled."

(Plaintiff's Post-Trial Brief, p. 3.) The plaintiff further argues that Judge Gormley's order should be "interpreted in a common sense manner . . . to mean that the $45,000 assessed value found by the Court referred to the 34 one bedroom units, despite the unfortunate and clearly unintended merging of all 38 units." (Plaintiff's Post-Trial Brief, p. 4.) Following Judge Gormley's order, the assessor valued the one-bedroom and efficiency units at issue in the 1994 appeal at $45,000 each.

In addition, the plaintiff claims that Judge Gormley's order leads to a revaluation of the two-bedroom and efficiency units that are the subject of the 1999 appeal. Specifically, the plaintiff claims that the assessor should adjust the value of these units by considering the $45,000 valuation of one-bedroom units in the 1994 appeal as a base and adjusting the two-bedroom and efficiency units according to certain percentages.

In effect, the plaintiff seeks to have this court change Judge Gormley's 1998 order after foregoing a timely appeal, a motion to reargue and/or a request for articulation. It is simply not the function of this court to modify the decision of another judge; to do so would allow a collateral attack on the prior judgment. "Unless a litigant can show an absence of subject matter jurisdiction that makes the prior judgment of a tribunal entirely invalid, he or she must resort to direct proceedings to correct perceived wrongs in the tribunal's conclusive decision. . . . A collateral attack on a judgment is a procedurally impermissible substitute for an appeal." (Citation omitted; internal quotation marks

omitted.) Joe's Pizza, Inc. v. Aetna Life & Casualty Co., 236 Conn. 863, 876, 675 A.2d 441 (1996).

"In [General Statutes] § 12-117a tax appeals, the trial court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the [taxpayer's] property. . . . At the de novo proceeding, the taxpayer bears the burden of establishing that the assessor has overassessed its property." (Internal quotation marks omitted.) United Technologies Corp. v. East Windsor, 262 Conn. 11, 22, 807 A.2d 955 (2002). The purpose of reciting the court's function in a tax appeal matter is to illustrate that the ruling of an earlier court has no bearing on the present appeal. The decision by Judge Gormley was based upon facts presented to him at that time involving an appeal on the Grand List of October 1, 1993. Judge Gormley's findings at that time are not pertinent to the issues before this court regarding the Grand List of October 1, 1998.

Accordingly, since the 1999 appeal is based upon a modification of a prior court's decision, not a de novo appeal pursuant to § 12-117a, judgment may enter in favor of the defendant dismissing this appeal without costs to either party.

2001 Appeal

In the 2001 appeal, the plaintiff challenges the assessor's valuation of all 56 units under its ownership as of the revaluation date of October 1, 2000. Upon the plaintiff's successful appeal to the Board of Assessment Appeals (Board), the assessor's valuations

were reduced and the changes were effective for the Grand List of October 1, 2000.

The plaintiff, however, seeks to further reduce the valuations because it claims the units "remain grossly overvalued and unlawful." (Plaintiff's Post-Trial Brief, p. 9.) The plaintiff purports to establish the fair market value of the 56 units through the testimony of William Chanaca (Chanaca), one of the plaintiff's principals.

Although Chanaca is not a licensed fee appraiser in Connecticut, he testified that he has a great deal of experience in the field of real estate as a property owner and manager. Chanaca's valuation of the 56 units is apparently based on his long career handling the sales and rentals of condominium units in the city of Bridgeport and its surrounding area. Chanaca testified that, in his opinion, the subject property's valuation is negatively impacted because it is located in a high crime area near the easterly border of Bridgeport. However, Chanaca's valuation of the subject units, based upon his experience, lacks a basic understanding of the appraisal process of real estate.

Christopher K. Kerin (Kerin), the town's appraiser, valued the subject 56 units, as of October 1, 2000, based on the plaintiff owning 85% of all Cedar Heights units and operating the subject units as rental apartments. Kerin is a licensed appraiser who applied accepted principles of real estate appraisal, including the market sales approach, in order to identify the highest and best use of the property. "[U]nder the general rule of property valuation, fair [market] value, of necessity, regardless of the method of valuation, takes

into account the highest and best value of the land. . . . A property's highest and best use is commonly defined as the '*use that will most likely produce the highest market value, greatest financial return, or the most profit from the use of a particular piece of real estate*.'" United Technologies Corp. v. East Windsor, supra, 262 Conn. 25. (Citation omitted; emphasis in original; internal quotation marks omitted.)

The various fair market values advanced for each of the 56 units are summarized as follows:

| Unit Description | Assessor | Board | Chanaca/C & H | Kerin/Town[1] |
|---|---|---|---|---|
| (4) Two-bedrooms | $50,000 | $45,000 | $20,000 | $60,000 |
| (44) One-bedrooms | $40,000 | $36,000 | $15,000 | $45,000 |
| (8) Efficiency | $30,000 | $28,000 | $12,000 | $30,000 |

Kerin noted that the subject units are difficult to value because the plaintiff rents the units and has not sold them outright to owner-occupants. Although Kerin considered the income approach to value, he recognized that the value of the units under this approach would be less than the units' value under the market sales approach. See Defendant's Exhibit C, p. 13. Therefore, the highest and best use concept requires the application of the market sales approach since it produces the greatest value for the subject property.

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[1] Valuation under the market sales approach.

In contrast to the plaintiff's limited valuation information, Kerin supported his finding of value by providing sales of condominium units in three Stratford housing complexes that he considered comparable to the subject.

Furthermore, Kerin made adjustments in the comparables for location, size and physical characteristics, including the plaintiff's concern regarding the property's proximity to the east side of Bridgeport. For all the foregoing reasons, the court finds Kerin's appraisal of the subject property credible.

The plaintiff's presentation of value does not rise to the level of proof that is needed to sustain its burden of proof. The plaintiff, therefore, has failed to show its aggrievement by establishing that the subject property has been overassessed and overvalued for tax purposes by the assessor. See United Technologies Corp. v. East Windsor, supra, 262 Conn. 22.

Accordingly, as to the 2001 appeal, judgment may enter in favor of the defendant dismissing this appeal without costs to either party.

Arnold W. Aronson
Judge Trial Referee