NO. CV 09 4016818S	:	SUPERIOR COURT
SONO EQUITIES, LLC AND 1122 ASSOCIATES, LLC	:	JUDICIAL DISTRICT OF
v.	: :	STAMFORD/NORWALK AT STAMFORD
CITY OF NORWALK	:	SEPTEMBER 28, 2012

MEMORANDUM OF DECISION

The plaintiffs, Sono Equities, LLC (Sono) and 1122 Associates, LLC (1122) bring this tax appeal challenging the valuations determined by the assessor of the city of Norwalk (city) for their respective properties as of the revaluation date of October 1, 2008.[1] The Sono property, located at 50 Washington Street, is a multi-tenant office building containing approximately 185,000 square feet (SF) of gross building area (GBA). 1122's property, located at 70 Dr. Martin Luther King, Jr. Drive, is a surface parking lot (hereinafter referenced as the MLK lot) containing 88 parking spaces.

As of October 1, 2008, the city valued the Sono office building at $17,246,700 and the MLK lot at $909,700, for a total fair market value of $18,156,400.

1 The city's board of assessment appeals made no change to the original assessments of the subject properties for the revaluation date of October 1, 2008. See Exhibit 1, attached to plaintiff's pleading #139, dated July 9, 2012. Furthermore, while the plaintiffs brought their four-count complaint pursuant to General Statutes §§ 12-117a and 12-119, the plaintiffs state in their post-trial brief, p. 4, that "[t]hey do not press their . . . § 12-119 claim."

The plaintiffs' appraiser, Patrick J. Wellspeak, utilizing the sales comparison approach and the income approach, concluded that the fair market value of the Sono building was $12,650,000 and the MLK lot was $850,000, as of October 1, 2008, for a combined fair market value of $13,400,000.

The subject properties are non-contiguous parcels of land located in the South Norwalk Business District zone (SNBD) "which permits a variety of commercial uses to include retail stores, offices, multi-family dwellings and mixed-use developments. . . . [A]ll of these uses conform to the surrounding neighborhood." (Plaintiffs' Exhibit 2, p. 25.) The Sono building sits on 0.598 acres and the MLK lot spans 1.426 acres.

When the subject office building was under construction in 1970, zoning regulations required that tenant parking be available. Therefore, the subject building's developer purchased the MLK lot in order to be in compliance with zoning. According to the plaintiffs, only 3% of the tenant vehicles park in the MLK lot due to its lack of proximity to the Sono building. See plaintiffs' 6/8/12 brief, p. 2.

On the other hand, the Webster Street parking lot (Webster lot), which is adjacent to the Sono building and accessible through Sono's rear entrance, is especially convenient for the Sono building's tenants. The Webster lot is a large municipally-owned parking lot with 612 parking spaces. It is managed by the city's parking authority.

As an alternative to its tenants' use of the MLK lot for parking, Sono annually purchases numerous parking permits at the Webster lot for its tenants' use. Wellspeak noted that "[a]lthough there is no contract or specific agreement with the city, [Sono] is allowed to purchase monthly permit parking passes for its tenants at market rates. As of the date of valuation, [Sono] provided to its existing tenants a total of 367 parking spaces, of which 341 represented non-reserved parking spaces and 26 represented reserved parking spaces. The sole cost of these permits resides with the landlord." (Plaintiffs' Exhibit 2, p. 19.) In order to utilize the MLK lot, Sono has an arrangement with the U.S. Postal Service (USPS) whereby USPS vehicles park at the MLK lot.[2]

Wellspeak describes the Sono office building as a 12-story, multi-tenant class B-office building with 184,998 SF of GBA and a net rentable area of 184,002 SF including 15,438 SF of finished below-grade rentable space. See plaintiffs' Exhibit 2, p. 22.

The Sono building was constructed with exterior precast concrete panels attached to the steel structure with metal clips. Nine-foot square windows were installed on the

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2 "The [MLK] site is leased to the [USPS] on a month-to-month basis at a rent of $30,000 per annum. The lot permits the USPS to utilize up to 88 parking spaces (as per written agreement) for its employees and has been in effect since 2000. The lease alleviates some of the demand being placed on the Webster Lot thereby enabling the City to grant 50 Washington Street additional parking permits. As a result, [the MLK lot], while not directly providing parking to [the Sono building], does indirectly support [it] and, as a result, its use is limited to parking as an economic benefit to 50 Washington [Street]." (Plaintiffs' Exhibit 2, p. 20.)

north and south side of the building leaving the east and west side without windows. With this type of exterior panel construction, the windows were constructed with a setback of 3 feet from the outside, making the interior use outdated.

Wellspeak further notes that “[t]he building has a center core layout on each floor. The center core of each tenant floor includes an elevator lobby with four elevators, men’s and women’s restrooms, mechanical and electrical storage areas and two stairwells. The entrance lobby is centered on the ground level and includes a central concierge desk, four elevators and access to the below-grade space. Tenant spaces on the north side of the lobby level include Chase Bank and the Passport Agency, each with their own direct entrance from the adjacent Webster Lot. The Plaza Deli and two vacant retail spaces occupy the south side of the lobby level fronting the municipal park. We note that two retail spaces have never been leased since the property owner purchased the building in 1999. The spaces are utilized primarily as storage space for the maintenance staff.” (Plaintiffs’ Exhibit 2, p. 23.)

Wellspeak concluded that the highest and best use of the subject property is its “continuation of the current multi-tenant office use and associated parking . . . as presently improved.” (Plaintiffs’ Exhibit 2, p. 26.)

Furthermore, Wellspeak considered the use of the three traditional approaches to value (cost, sales comparison and income). Wellspeak did not consider the cost approach on the nearly 40-year-old Sono building because of the difficulty in quantifying various forms of accrued depreciation. Instead, Wellspeak used the sales comparison approach and the income approach to value the Sono building and the MLK lot.

Turning to the valuation of the Sono building, Wellspeak, using the sales approach, selected three sales that in his opinion were comparable to the subject office building. Wellspeak could find no true comparables in Norwalk or in Fairfield County, as of October 1, 2008. Because of the lack of good comparables, Wellspeak considered the income approach (discussed below) to be superior in determining the Sono building's fair market value.

Wellspeak selected the following three sales:

45-55 Church Street	New Haven
11 Asylum Street	Hartford
100 Pearl Street	Hartford

The apparent reason Wellspeak selected the so-called comparable sales outside of Fairfield County is that he was looking for office building sales that lacked parking or had limited on-site parking for tenant use in order to match the Sono building's parking conditions. Lack of on-site parking was a major factor in Wellspeak's conclusion that the city overvalued the Sono building. As a result, he considered it necessary to look for sales of office buildings with this same type of negative feature in the Hartford and New Haven areas.

As recognized by the city, the problem with Wellspeak's selection of comparables is that none of the sales are in the same competitive Fairfield County market for office buildings. When applying the sales comparison approach, an appraiser should consider researching "the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property." The Appraisal of Real Estate (12th Ed. 2001) p. 422.

The court recognizes Wellspeak's attempted research into the competitive office market in Norwalk which is located in the south central Fairfield County submarket. However, there is no analysis given to justify selecting sales in a different competitive market than the subject office building, except as to the issue of the lack of on-site parking. See plaintiffs' Exhibit 2, p. 10. Lack of on-site parking does not appear to be a sufficient justification to seek comparables in the New Haven or Hartford office building market.

In addition to considering the competitiveness of the office market for comparability, the Sono building was classified by Wellspeak as Class B-, whereas different classifications were made for the buildings in his sale two (Class B) and sale three (Class A).

Because of Wellspeak's concern for the lack of on-site parking as a major factor in his valuation of the subject, it is necessary to fully explore and analyze this concern.

As mentioned above, the subject is located in the SNBD zone which was part of the city's urban renewal plan requiring a certain number of parking spaces in order to construct an office building in that zone. For this reason, the approval for the construction of the Sono building was dependent upon the developer obtaining parking to comply with the zoning requirements of the urban renewal. The purchase and construction of the MLK lot was a necessary part of the Sono building's construction. Under these circumstances, the MLK lot justifies Wellspeak's characterization of the lot as an accessory to the office building. See plaintiffs' Exhibit 2, p. 42.

Although Wellspeak determined the value of the MLK lot using the sales approach, it would appear highly unlikely for the MLK lot to be sold separately from the Sono building since that would make the Sono building non-compliant with the SNBD zone's parking requirements. See plaintiffs' Exhibit 2, p. 18. Adding to the difficulty in valuing the MLK lot is the fact that most of Sono's tenants do not use the MLK lot and prefer to park at the Webster lot. By entering into a lease agreement with the USPS to park its vehicles at the MLK lot, the plaintiffs are changing the use of the MLK lot to an income-producing asset.

When the plaintiffs purchased the Sono building and the MLK lot on February 16, 1999 for $7,150,000, the use of the Webster lot most likely was a motivating factor in acquiring the subject office building. Although Sono complains of the annual cost of acquiring parking spaces at the Webster lot for its tenants' use, part of the cost to park goes to the maintenance of the parking lot which would have been the plaintiffs' responsibility if it owned the Webster lot. As it stands, the Webster lot provides immediate access to the adjoining office building for the benefit of tenants and visitors, leaving the city to maintain the parking lot and pay for paving, snow removal and landscaping.

Accepting Wellspeak's opinion that the use of the sales comparison approach is not helpful, an examination of Wellspeak's use of the income approach is necessary given the fact that the city did not offer the opinion of an appraiser to counter Wellspeak's analysis and opinion.

In considering the income approach,[3] Wellspeak reviewed copies of all leases for

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"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." (Internal quotation marks omitted.) Branford v. Santa Barbara, 294 the Sono building, as of the revaluation date. He concluded that there were 24 lease agreements occupying a total of 137,565 SF of NRA or 74.8 % of the total available NRA. See plaintiffs' Exhibit 2, pp. 44-45. Wellspeak further noted as follows:

"The leases range in rate from $15.77/SF to $36.50/SF with the majority of the leases on a gross plus electric basis with approximately one-half of the tenants responsible for increases in operating expenses and real estate taxes over base year. . . . [T]he high end of the contract rental range is represented by Connecticut Passport which received a substantial work allowance at the commencement of their agreement that resulted in higher rental payments to amortize some of this cost. The tenant electric expense is charged based on a set amount ranging between $1.75/SF to $2.50/SF. In addition, the lease agreements typically include some increases over the term. The exceptions to tenant electric payment includes STSC Consulting and Connecticut Passport [in] which each [has] a gross lease payment to include tenant electric, and Norwalk Billiards and Plaza Deli [in] which each are separately metered for tenant electric. It should also be noted that SoNo Corporate Suites, which encumbers the entire 7th floor, is a related party lease that is effectively owner-occupied."

(Plaintiffs' Exhibit 2, p. 44.)

Following a review of all of the leases in the Sono building, Wellspeak concluded

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Conn. 785, 793 n.12, 988 A.2d 209 (2010).

that its overall contract rental rate, as of October 1, 2008, was $21/SF on a fully gross basis.[4]

Turning to the market rent portion of the income approach, Wellspeak analyzed fourteen market rentals of comparable properties in the local real estate market, concluding that the appropriate fair market rent rate for the Sono building, as of the revaluation date, was $21/SF on a fully gross basis. See plaintiffs' Exhibit 2, p. 55.

Wellspeak also recognized additional income to the Sono building consisting of basement storage space, which he estimated produced an additional income in the amount of $13,500. See plaintiffs' Exhibit 2, p. 55. Wellspeak's potential gross income (PGI) was developed by multiplying his finding of fair market rent of $21/SF by the Sono building's NRA of 184,002 SF plus the additional income of $13,500, to arrive at PGI of $3,877,542. See plaintiffs' Exhibit 2, p. 60. However, the Sono building generated additional income from eight communication license agreements for rooftop antennae which generated revenue in the amount of $206,722.[5] See plaintiffs' Exhibit 2, p. 55.

Wellspeak considered this additional income as risky and added it to the ultimate

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[4] Wellspeak noted that "the aforementioned estimate of net operating income is based upon market rents. However, in order to give consideration to existing contract rents[,] we reviewed the lease encumbrances impacting the subject as of the date of valuation. We found that . . . the leases generally approximate market rents . . . ." (Plaintiffs' Exhibit 2, p. 61.)

[5] This amount excludes the AAT Communications Corporation license revenue as the lease expired in December 2008 and did not have any additional renewal periods.

value by capitalizing the rooftop income at a much higher cap rate. See plaintiffs' post-trial brief, p. 20. In the court's viewpoint, there is no difference between the use of income from renting rooftop space from the use of income from renting storage space.

Consequently, the $206,722 of rooftop income should be added to the Sono building's PGI (as found by Wellspeak at $3,877,542), resulting in PGI of $4,084,264.

As discussed above, Wellspeak excluded the rooftop income to arrive at an effective gross income (EGI) of $2,908,157 after deducting a vacancy/collection rate of 25%. His basis for using this high vacancy/collection rate was developed by weighing the Sono building's historical occupancy, the difficulty leasing the first floor retail suites and the deteriorating market condition in 2008. See plaintiffs' Exhibit 2, p. 56.

Wellspeak used both market rent and contract rent to develop the Sono building's overall fair market rent. Wellspeak did not use the market vacancy rate. Sono provided Wellspeak with the subject office building's average annual occupancy rates from 1999 to 2008. The Sono building's average annual occupancy rate was 79.9 %. See plaintiffs' Exhibit 2, p. 56. Wellspeak acknowledged that the overall vacancy rate in the Norwalk market was 14%. In arriving at 25% for a vacancy/collection rate, Wellspeak did consider the market vacancy rate but did not factor it into his determination.

According to Wellspeak, the Sono building's occupancy ranged between 75.1% and 80.6% in the three years closest to the revaluation date (2006-2007-2008). See plaintiffs' Exhibit 2, p. 56, the "Historical Occupancy" chart. Given the Sono building's vacancy history and considering the limited market information on vacancies, the court finds that a vacancy/collection rate of 20%, rather than Wellspeak's 25%, is more credible in formulating net operating income (NOI) for the purpose of determining the Sono building's fair market value. Deducting a 20% vacancy/collection rate in the amount of $816,853 from PGI of $4,084,264, as found by the court, results in EGI of $3,267,411.

Wellspeak next reviewed the subject building's operating expenses, excluding real estate taxes, and concluded that the operating expenses amounted to $1,705,908. See plaintiffs' Exhibit 2, p. 60. Deducting the operating expenses of $1,705,908 from EGI of $3,267,411, as found by the court, results in NOI of $1,561,503.[6]

Wellspeak, relying on both a mortgage-equity analysis and a market sales extraction process, arrived at a capitalization rate of 9.5% to which he added an effective tax load of 1.385%, resulting in a tax-loaded capitalization rate of 10.885%. See plaintiffs' Exhibit 2, p. 64.

Dividing NOI of $1,561,503 by the tax-loaded capitalization rate of 10.885% results in a fair market value of $14,345,457 for the Sono building. As this amount is lower than the city's determination of value for the Sono building, as of October 1, 2008,

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6 Compare NOI as found by Wellspeak at $1,202,248. See plaintiffs' Exhibit 2, p. 60.

Sono is aggrieved by the action of the assessor.

Turning to the valuation of the MLK lot, as of October 1, 2008, the city's assessor determined that the MLK lot had a fair market value of $909,700. See plaintiffs' Exhibit 2, p. 18. Wellspeak, using the sales comparison approach, concluded that the fair market value of the MLK lot, as of October 1, 2008, was $850,000. See plaintiffs' Exhibit 2, p. 42.

Wellspeak noted that "[t]he subject property is an ancillary parking lot that lacks development potential due to the fact that the site indirectly supports the subject improvement at 50 Washington Street." (Plaintiffs' Exhibit 2, p. 42.) Yet, in spite of this restriction on the use of the MLK lot, Wellspeak selected three land sales that he admittedly knew were not good comparable sales. Wellspeak observed that "[t]he three land sales each represent developable commercial land parcels exhibiting good utility for development and no restrictions on use." (Plaintiffs' Exhibit 2, p. 42.)

In the final analysis, Wellspeak came to the following value conclusion of the MLK lot: "The subject lot would most appropriately fall between the high end of the range presented by the sales and the low end of the range presented by the monetary value contribution to 50 Washington Street. Therefore, we have estimated a contributory land value from 70 Dr. Martin Luther King, Jr. Drive of $850,000." (Plaintiffs' Exhibit 2, p. 42.)

Wellspeak alternatively used the income approach to value the income to the MLK lot of $30,000 provided by a lease to the USPS (and the potential savings to the Sono building) using a capitalization rate between 7.5% and 8.5%. See plaintiffs' Exhibit 2, p. 42.

Recognizing the difficulty that Wellspeak had in attempting to place a value on the MLK lot, the degree of separation between the city assessor's valuation determination of $909,700 and Wellspeak's questionable valuation of $850,000, these factors taken together convince the court that the plaintiffs have not sustained their burden of showing that the MLK lot was overvalued. See, e.g., Route 188, LLC v. Middlebury, 93 Conn. App. 120, 125-26, 887 A.2d 958 (2006).

Accordingly, the court finds that the fair market value of the Sono building was $14,345,457 and the fair market value of the MLK lot was $909,700, for a total fair market value of $15,255,157, as of October 1, 2008. Therefore, judgment may enter in favor of the plaintiff Sono Equities, LLC, sustaining its appeal for the subject office building in count one. Judgment may enter in favor of the defendant city as to the MLK lot in count three. No costs are awarded to any party.

Arnold W. Aronson
Judge Trial Referee