

NO. CV 02 0125175S : SUPERIOR COURT
ALICE E. DAGGETT, ET AL. : JUDICIAL DISTRICT OF
 : NEW LONDON
 : AT NORWICH
v.
TOWN OF COLCHESTER : DECEMBER 31, 2003

MEMORANDUM OF DECISION

This real estate tax appeal was brought by the plaintiff Colchester Tool and Die, Inc., a corporation wholly owned by Alice E. Daggett. The plaintiff, on October 1, 2001, the revaluation year, owned property containing .80 acres of land and known as 107-111 Lebanon Avenue in the town of Colchester. The subject property was improved with three separate buildings, 107 Lebanon Avenue, 111 Lebanon Avenue and an outbuilding, that was valued by the assessor at \$431,500. The plaintiff's appraiser, Dean C. Amadon (Amadon) valued the subject premises at \$357,850.

107 Lebanon Avenue was improved with a two-story apartment complex containing 4,805 square feet of gross building area. This property was built in the 1800s and subsequently modernized. 107 Lebanon Avenue has seven apartment units, each a one-bedroom unit. However, one apartment is non-functioning and is used by the plaintiff for storage purposes. The plaintiff failed to provide the town or its own appraiser with the contract rents on the apartments. The plaintiff's appraiser used his experience as an appraiser to opine that the contract rent should be "approximately" \$500 per month. The plaintiff's appraiser also concluded that \$500 per month rent was market rent. There was some confusion in the appraiser's position as to whether the plaintiff provided the contract rent or whether the plaintiff's accountant provided contract rent. We conclude that neither the owner nor the accountant provided rental information to the appraiser, and that the appraiser used his own best judgment as to what the contract rent should have been for the apartments.

There also appears to be some confusion as to whether the plaintiff contests the assessor's valuation as to 107 Lebanon Avenue. This confusion arises from plaintiff's appraiser conducting a value analysis of 107 Lebanon Avenue using the income and market sales approach to arrive at a fair market value equal to that of the assessor and plaintiff's answer to the defendant's interrogatory which stated: "N.B. Plaintiff's appeal is restricted to buildings and lot at 111 Lebanon Avenue, Colchester owned by the Colchester Tool and Die Company which in turn is owned by Alice Daggett. The 1968 purchase included a seven unit apartment building which is a remodeled hotel built in the 1850's located at 107 Lebanon Avenue. The assessment, with respect to that seven unit apartment building, is not being appealed and it is not included in the real estate appraisal cited hereinafter." (Defendant's Exhibit 2.)

It would appear that the plaintiff is not contesting the assessor's valuation of 107 Lebanon Avenue, because, in undertaking a separate evaluation process of 107 and 111 Lebanon Avenue, Amadon agreed with the assessor's valuation of 107 Lebanon Avenue. However, Amadon disagreed with the assessor's valuation of 111 Lebanon Avenue. In conducting his valuations, Amadon considered the income approach as well as the sales approach in determining the fair market value of 107 Lebanon Avenue. In arriving at a value of 107 Lebanon Avenue using the sales approach, Amadon looked at the sale of three small apartment buildings ranging from 4 units to 8 units at an age similar to the subject. These three sales covered a period from 1995 to 2000 and had a range of price per square foot from \$33.11 to \$70.18. Amadon concluded that from this information the subject value would be \$49.50 per square foot times 4,805 square feet or \$237,848.

As previously noted, Amadon, not having the actual income of 107 Lebanon Avenue, concluded that the market rent and the contract rent at \$500 per month was the same. If Amadon used the contract rent, he would have had rent for only six units, since one unit was not rented. When conducting his income analysis, Amadon based his income from 107 Lebanon Avenue on the market rent for seven units. Amadon also determined that a 5 percent vacancy and rent loss factor could be used along with an expense ratio of 40 percent to arrive at a net operating income of \$23,940. Using a capitalization rate of 10 percent, Amadon arrived at a fair market value of \$239,400 which he rounded to \$237,850. Amadon rationalized that his valuation of \$237,850 was the same valuation arrived at by the assessor using the assessor's building valuation of \$186,200 and taking one-half of the land value used by the assessor at \$51,650 for a total value of \$237,850.

Turning to 111 Lebanon Avenue, we find an improved mixed use building constructed in the 1920s containing 4,755 square feet of gross building area. This

building contains some retail use in front and industrial use in back. 111 Lebanon Avenue was leased in part for a store and garage to ValCor Communications and to Sur-Tech for shop use. (See Defendant's Exhibit 1.) As with 107 Lebanon Avenue, neither the plaintiff nor its accountant provided the assessor or Amadon with income and expense figures related to the operation of this property. However, plaintiff's disclosure in its response to defendant's interrogatory does provide income figures only. (See Defendant's Exhibit 2.)

Using a pro forma income and expense statement based upon his experience as an appraiser, Amadon considered that the income for 111 Lebanon Avenue would be \$3.00 per square foot with an operating expense of 2.5 percent for management and 2.5 percent for structural reserve. Using a capitalization rate of 11 percent, Amadon concluded the fair market value of 111 Lebanon Avenue, as of October 1, 2001, was \$120,000. Amadon ignored or was unaware of information disclosed in defendant's discovery that the two tenants at 111 Lebanon Avenue were actually paying a blended rate of \$4.67 per square foot of gross building area. (See Defendant's Exhibit 2, interrogatory 7 b.) The assessor determined that the fair market value of the building at 111 Lebanon as of October 1, 2001 was \$112,800. (See assessor's card attached to Plaintiff's Exhibit A.) When Amadon took the assessor's building value of 107 Lebanon Avenue at \$186,200 and one-half of the land at \$51,650, to arrive at \$237,850, no comparable assignment of the other half of the land value was attached to the assessor's valuation of 111 Lebanon Avenue at \$112,800. To be consistent with Amadon's reasoning, the value of one-half of the land would have to be added to the assessor's valuation of the building at 111 Lebanon Avenue to make it \$164,450. If we add \$237,850 to \$164,450, we find that the assessor's final valuation, using Amadon's analysis, would be \$402,300. Adding the assessor's valuation of the outbuilding at \$29,200 (to which Amadon placed no value), the

assessor, using Amadon's reasoning, would have arrived at a final valuation of \$431,500. This again, is consistent with the assessor's own valuation of the subject property, as a whole, on the list of October 1, 2001.

The town offered no appraisal in support of its valuation, nor was it required to do so. Ireland v. Wethersfield, 242 Conn. 550, 559, 698 A.2d 888 (1997). The town argues that the plaintiff's appraiser did a piecemeal appraisal, failed to use actual income and expense figures and failed to use credible comparables to arrive at the value of the subject property as of October 1, 2001. We agree.

It is basic to a General Statutes § 12-117a tax appeal that "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).

Amadon concluded that the highest and best use of the subject property was its continued use as a mixed use property. This means that the highest and best use of the subject property was to continue the use of 107 Lebanon Avenue as a seven one-bedroom apartment building and the continued use of the commercial building at 111 Lebanon Avenue. However, Amadon treated the subject property as two separate and independent parcels for valuation purposes using the sales and income approach to value of both 107 Lebanon Avenue and 111 Lebanon Avenue. Amadon's selection of comparable sales were not comparables that had a mix of apartment rentals and commercial rental but rather were comparables of either apartment uses or commercial uses. In valuing real estate, we value the property as a whole, not as separate components that make up the property. National Amusements, Inc. v. East Windsor, Superior Court, judicial district of New Britain, Docket No. CV 00-0503380 (Aronson, JTR, February 10, 2003) (34 Conn. L. Rptr. 84). In this regard, in order to arrive at the present true and actual value of the

subject 107-111 Lebanon Avenue property, we would have to consider comparable sales of mixed use properties similar to that of the subject. When we look at the subject property from the standpoint of a purchaser, we recognize that we cannot purchase one half or the other, but rather, the property must be purchased as a whole unit.

When an appraiser uses the income approach as a method of determining the value of income producing property, such as 107 and 111 Lebanon Avenue, he or she must be aware of General Statutes §12-63b (b), which requires the assessor, and therefore, the appraiser, to consider the contract rent of the subject when determining the market rent.¹ The failure of the plaintiff to provide the assessor and its own appraiser with income and expense information from the subject property affects the credibility we attach to Amadon's determination of value using the income approach. The plaintiff did supply the assessor with a 2001 Annual Income and Expense Report Summary that is lacking in basic information. (See Defendant's Exhibit 1.) In this exhibit, the apartment rental at 107 Lebanon Avenue is reported as \$32,145, whereas Amadon used a potential gross income of \$42,000. Defendant's Exhibit 1 reports income for office rental and industrial rental at a total of \$20,600. Amadon reported a potential gross income for 111 Lebanon Avenue at \$14,265. The expense side of Defendant's Exhibit 1 appears to combine the expenses of both properties so that one is not able to allocate expenses to one property or the other.

Based upon the above analysis, we find that the plaintiff has failed to sustain its burden to show that it was aggrieved by the valuation placed by the assessor upon its

¹General Statutes §12-63b (b) recites in pertinent part, "In determining market rent the assessor shall consider the actual rental income applicable with respect to such real property under the terms of an existing contract of lease at the time of such determination."

property on the list of October 1, 2001. Accordingly, judgment may enter in favor of the defendant town of Colchester denying plaintiff's appeal without costs to either party.

Arnold W. Aronson
Judge Trial Referee