

NO. CV 02 0515610S : SUPERIOR COURT
SOUTHERN NEW ENGLAND :
TELEPHONE COMPANY : JUDICIAL DISTRICT OF
v. : NEW BRITAIN
TOWN OF EAST HARTFORD : JULY 19, 2004

MEMORANDUM OF DECISION

This is a real estate tax appeal concerning the assessor's valuation of property located at 14 Chapman Street, East Hartford owned by the plaintiff, The Southern New England Telephone Company (SNET), as of the last revaluation date of October 1, 2001. On that date, the plaintiff's property was valued by the assessor at \$960,980.

14 Chapman Street is a rectangular parcel of land containing .51 acres and is improved with a two story building originally constructed in 1928 as a telephone switching station. The subject building, which continues to be used as a telephone switching station, contains a basement area of 7,226 square feet, a first level area of 8,818 square feet and a second story area of 6,072 square feet. The gross area of the building, including the basement, is 22,116 square feet.

The building, as constructed in 1928, is a vault-like structure that was designed to contain and protect heavy mechanical telephone switching equipment. The subject building currently houses computerized switching equipment, which requires less space than mechanical switches. The subject building has thick masonry walls, ceilings and floors on all three levels. The building has a good heating and cooling system on each level to maintain a constant temperature for the protection of the equipment in the building. During a post-trial inspection of the subject at the plaintiff's request, the court observed that switching operations were carried on at all three levels of the building, including the basement, which housed utilities, large central telephone lines coming into and going out of the building and other functions. The building has no elevator, but it does have a central stairway serving all three levels. There have been additions and renovations throughout the life of the building. Plaintiff's appraiser, Arnold J. Grant (Grant), noted that additions to the subject building were made in 1947 and 1953. Recent improvements noted by Grant were: approximately \$75,000 spent in 1997 to power wash and re-caulk the exterior walls and for window replacements; \$101,000 spent in 2000 to enhance the air conditioning system; and, \$54,000 spent in 2000 on interior upgrades and the paving of the parking lot on the west side of the building. (See Plaintiff's Exhibit A, p. 18.) The town's appraiser, Robert J. Flanagan (Flanagan), noted recent building permit records running from January 16, 1985 to March 20, 2000, related to interior improvements to the subject building such as air conditioning replacements, removal and replacement of a 14,000 gallon tank, replacement of a fire alarm system, replacement of exterior windows and other renovations. (Defendant's Exhibit 4, p. 30.) There is scattered shop type office space throughout the building related to the existing operation of telephone switching.

The subject property is a non-conforming use located in a B-4 business zone since

a telephone switching station is neither a permitted use or a use by special permit. As Grant noted, “Chapman Street intersects Main Street (Route 5) less than one block east of the subject. This intersection is within the center of East Hartford which runs roughly from I-84 to Burnside Avenue. The center of East Hartford is a commercial area comprised primarily of retail and small office buildings including the East Hartford town buildings. Two churches are also located within this section of Main Street. The subject is across the street from four brick three story apartment buildings which are adjacent to the Savings Bank of Manchester (SBM) branch, located at the corner of Chapman and Main Streets. The subject property abuts Webster Bank, which is across from SBM to the east. To the west lie several single and multi-family residences.” (Plaintiff’s Exhibit A, p. 14.) From the court’s personal inspection of the subject, it was noted that the Center School is located at the end of Chapman Street, a short distance to the west of the subject. (See also, Defendant’s Exhibit 4, p. 23.)

Grant, plaintiff’s appraiser, concluded that the highest and best use of the subject property is its “[c]ontinued use . . . for industrial purposes Absent demand for telecommunications use, the highest and best use would be for light industrial use such as printing or document storage, or possible conversion to alternative use such as office use (if sufficient parking could be secured).” (Plaintiff’s Exhibit A, p. 23.) On the other hand Flanagan, the defendant’s appraiser, concluded that the “highest and best use of the subject property is its special purpose, telephone switching facility use.” (Defendant’s Exhibit 4, p. 34.)

The subject property was built in 1928 specially suited to house telephone switching equipment for the telephone company and it continues to be used for that purpose. We agree with Flanagan that on October 1, 2001 the subject property’s highest and best use was for its special purpose as a telephone switching facility. We disagree

with Grant's analysis that the subject property's use is for industrial purposes and that absent demand for the present use, the highest and best use would be for light industrial use. The subject is a non-conforming use located in a commercial zone, not an industrial zone, and the surrounding properties are incompatible to industrial use such as printing or document storage as suggested by Grant. Four residential apartment buildings are located across the street from the subject. Two banks are in close proximity to the subject. A school is located a short distance away and the subject is located within the downtown East Hartford commercial district. As Grant noted in his appraisal report, parking at the subject is very restricted, which limits the amount of traffic going into and out of the subject property. From the standpoint of the neighborhood, the two story structure fits into the neighborhood and the internal use of the building as a switching station is not apparent from the outside. To conclude that the highest and best use of the subject is for industrial use is to ignore the existing zoning restrictions. Such a conclusion would also require ignoring the fact that the building has been used as a switching station for such a long period of time with no indication that the use would be discontinued within a relatively short period of time.

Grant undertook his valuation process by considering all three approaches to value: the cost approach, the income approach and the sales comparison approach. Using these three approaches to value, Grant concluded that the subject property, as of October 1, 2002, had a fair market value of \$400,000.

In using the cost approach, and consistent with the subject's commercial zoning, Grant examined land sales of commercial property in East Hartford and arrived at a per acre land value of \$300,000, or \$153,000 for the .51 acre subject, which he rounded to \$150,000. Using the Marshall Valuation Service, a nationally accepted cost estimating source, to determine the replacement cost new of telephone buildings as a subset of

industrial buildings, Grant arrived at \$400,000 as the value for the subject including land. Deducting Grant's valuation of the land at \$150,000, his value of the building had to be \$250,000. In arriving at his conclusion of value as to the building, using the cost approach, Grant determined that the accrued depreciation from all sources was 90 percent.

Grant next turned to the income approach using the direct capitalization method to convert an estimate of a single year's income expectancy into an indication of value by dividing the income estimate by an appropriate income rate. Grant concluded that the market lease rate for light industrial use was \$4.00 per square foot for the first floor of the building and \$3.00 per square foot for the second floor, both on an absolutely net basis, to determine his forecast of the subject's income production. Grant reviewed the lease rates of industrial property in East Hartford, South Windsor and Windsor to arrive at his market lease rate estimate of \$4.00 per square foot of rental space. Because the subject is located within a commercial zone, we find that the use of these industrial rentals, some of which have loading docks and ample parking not available to the subject, lack credibility as comparable leases. The problem that we have with Grant's analysis is that he concluded that a telephone switching station is an industrial use and from that conclusion draws rentals from industrial uses that have no comparison to the physical structure of the building, its location and its continuing use as a telephone switching station.

The present property is owner occupied. There was no contract rent to consider. On October 1, 2001, the subject property was not income producing property, nor was there any evidence that in the foreseeable future it would become income producing property. The use of the income approach in this case is purely theoretical. "The highest and best use of a property as improved may be continuation of the existing use. In such a case, the appraiser need not analyze expenditures or rates of return for alternative uses

except to test or support the conclusion of highest and best use.” Appraisal Institute, *The Appraisal of Real Estate* (12th Ed. 2001) p. 315. Where the present use of the property will be a continuation of that use, as in the present case, there is no need to consider the renovation or rehabilitation, expansion, adaptation or conversion to another use. *Id.*, 315-16. From the standpoint of the income approach, where the subject, as a special purpose building, is owner occupied, with no prospect of change in that relationship, we see no point in obtaining rentals of industrial space to establish a market rent.

Grant also used the sales comparison approach in arriving at his \$400,000 valuation of the subject. We note Grant’s comment that the “[s]ales [c]omparison [a]pproach is based upon the idea that the subject property must compete with other similar properties” (Plaintiff’s Exhibit A, p. 41.) Yet, despite Grant finding that the subject property is in a commercial zone, he selects properties located in industrial zones. We recognize that Grant selected sales in industrial zones because of his initial determination that the highest and best use of the subject is for industrial use. However, since we find that the highest and best use of the subject property is for its continued use as special purpose property, the sales approach would require comparison with special purpose properties similar to the subject. Another factor in Grant’s selection of comparable sales was to initially conclude that the 3 percent office space in the subject was inadequate for industrial use since “[i]ndustrial users prefer buildings with 10 [percent] - 15 [percent] office space.” (Plaintiff’s Exhibit A, p. 42.) Rather than select comparable sales with office space similar to the subject, Grant’s comparables consisted of sale one with 40 percent office space; sale two with 30 percent office space; sale three with 10 percent office space; sale four with 20 percent office space; sale five with 20 percent office space; sale six with 80 percent office space, including a 4,180 square foot office mezzanine added at the time of a previous sale in 1987; and sale seven with 20

percent office space. The sales selected by Grant do not compete with the subject property, they are inapposite. Of the seven sales selected by Grant, only sale six has any similarity to the subject. Sale six is located at 155 Locust Street, Hartford containing a one story, masonry type building constructed in 1984 containing 15,140 square feet. This property sold for \$1,090,000 on September 30, 1999. Sale six was originally constructed to house a general contracting business, but was soon after refit for office use. The property was then purchased in order to create a telecommunications facility primarily designed for internet connections. It is that sale that was considered by Grant in his appraisal report. Grant notes that sale six was the “combination of a motivated buyer and a reluctant seller [resulting] in a an above market sale price.” (Plaintiff’s Exhibit A, p. 57.) We find that the sales selected by Grant to arrive at fair market value lack the similarity he notes is required to make them comparable to the subject. “[T]he sales comparison approach is usually not applied to special-purpose properties because few similar properties may be sold in a given market, even one that is geographically broad. To value special-purpose properties, the cost approach may be more appropriate and reliable.” *The Appraisal of Real Estate*, supra, p. 419.

Flanagan, the defendant’s appraiser, concluded that the fair market value of the subject property, as of October 1, 2001, was \$1,000,000, using the cost approach and the sales approach. In the sales approach, Flanagan used 155 Locust Street, Hartford as his only comparable. Here we have two professional appraisers using what they considered to be the same comparable sale, yet arriving at a value that is \$600,000 apart. This difference demonstrates the lack of confidence that we have in using the sales approach as a credible method in arriving at the fair market value of the subject.

Turning to Flanagan’s use of the cost approach, he found the land value of the subject to be \$157,727, rounded to \$158,000, whereas Grant found the land value of the

subject to be \$153,000, rounded to \$150,000. Flanagan also added \$9,500 worth of site improvements to his valuation under the cost approach for landscaping and blacktopped paving. (See Defendant's Exhibit 4, p. 55.) Flanagan and Grant, although close on their value of the land, were substantially apart on the value of the building and site improvements. Flanagan valued the building at \$830,000, whereas Grant valued the same building and site improvements at \$250,000. The significant difference in the approaches used by Flanagan and Grant, was in the fact that Grant used an accrued depreciation factor of 90 percent, whereas Flanagan depreciated the value of the building by approximately 65 percent. Both Flanagan and Grant, using the Marshall Valuation Service, arrived at similar cost of the building as new. Flanagan's building cost as new was \$2,433,000. Grant had total building cost as new of \$2,447,086.

The major difference in the appraisers' valuations results from their determination of the depreciation of the subject property using the cost approach. Grant used the market to determine the depreciation of the seventy year old subject building. This method is known as the market extraction method. *The Appraisal of Real Estate*, supra, p. 383.

The Appraisal of Real Estate, supra, p. 383, outlines three principal methods for estimating depreciation: the market extraction method, the age-life method and the breakdown method. "The market extraction method relies on the availability of comparable sales from which depreciation can be extracted. It makes direct comparisons with market sales and is easy to understand and explain, but, in considering all elements in one calculation, market extraction can be an oversimplification of the complex interplay of physical, functional, and external causes of depreciation. The technique is primarily used to extract total depreciation, to establish total economic life expectancy, and to estimate external obsolescence." *The Appraisal of Real Estate*, supra, p. 389.

The age-life method considers the “effective age and economic life expectancy of a structure [as] the primary concepts used by an appraiser in measuring depreciation In the age-life method, total depreciation is estimated by calculating the ratio of the effective age of the property to its economic life expectancy and applying this ratio to the property’s total cost.” *The Appraisal of Real Estate*, supra, p. 392.

“The breakdown method is the most comprehensive and detailed way to measure depreciation. When used in conjunction with the market extraction and age-life methods, the breakdown method disaggregates a total depreciation estimate into component parts - physical deterioration, functional obsolescence, and external obsolescence - which can, in turn, be broken down into more precise components” *The Appraisal of Real Estate*, supra, p. 395-96.

Flanagan used the breakdown method in determining the total depreciation factor in valuing the subject building. Flanagan concluded that the subject building had a physical deterioration factor of 50 percent of the reproduction cost, or \$1,216,500. This was based on the actual age of the building, an effective age of thirty years and an economic life of sixty years. (Defendant’s Exhibit 4, p. 53.) From the \$1,216,500 physically depreciated cost of the building, Flanagan subtracted another 35 percent, or \$425,775, to account for obsolescence. This resulted in a depreciated cost of the building of \$790,725, to which Flanagan added a 5 percent entrepreneurial profit, giving him a building value estimate of \$830,225, rounded to \$830,000. (Defendant’s Exhibit 4, p. 54.)

Whereas Flanagan determined that the accrued depreciation of the building was \$1,642,275, Grant determined that the accrued depreciation from all sources was \$2,200,000. Given the substantial improvements made to the subject building over the years and the condition in which the building was maintained, we find it difficult to

accept Grant's analysis that the building, on October 1, 2001, had depreciated in value by 90 percent.

It is well established that the taxpayer has the initial burden in a tax appeal of demonstrating aggrievement by showing that its property was overassessed, and until the taxpayer proves aggrievement, a court need go no further. Aetna Life Ins. Co. v. Middletown, 77 Conn. App. 21, 26, 822 A.2d 330 (2003), cert. denied, 265 Conn. 901, 829 A.2d 419, citing United Technologies Corp. v. East Windsor, 262 Conn. 11, 22-23, 807 A.2d 955 (2002). If the trial court finds that the taxpayer has not met its initial burden of establishing that its assessment was excessive, the trial court may render judgment for the town on that basis alone. Ireland v. Wethersfield, 242 Conn. 550, 557-58, 698 A.2d 888 (1997). We have never placed the initial burden on a town to justify the assessor's valuation of a taxpayer's property. *Id.*, 558.

Essentially, the subject property was constructed as a telephone switching station in 1928 and has been used continuously for the same purpose since that time. As we have previously noted, the plaintiff has periodically improved and maintained the subject building over the years for the same use. As of October 1, 2001, the subject was a telephone switching station and its highest and best use was a switching station. We cannot, as the plaintiff would have us do, find a general industrial use for the subject when such a use is not the case. We cannot make a camel into a horse by calling it a horse. State v. James, 211 Conn. 555, 562, 560 A.2d 426 (1989), citing Ducharme v. Putnam, 161 Conn. 135, 140, 285 A.2d 318 (1971).

After "weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and [our] own general knowledge of the elements going to establish value. . . ."; United Technologies Corp. v. East Windsor, *supra*, 262 Conn. 23; we conclude that the plaintiff has failed to establish that the subject

property was overassessed on the list of October 1, 2001. Accordingly, the plaintiff's appeal is dismissed without costs to either party.

Arnold W. Aronson
Judge Trial Referee