

NO. CV 07 4007272S : SUPERIOR COURT
TOURGATE REALTY INC. : JUDICIAL DISTRICT OF TOLLAND
v. : AT ROCKVILLE
TOWN OF COLUMBIA : AUGUST 25, 2010

MEMORANDUM OF DECISION

The plaintiff, Tourgate Realty, Inc. (Tourgate), brings this real estate property tax appeal contesting the assessor's valuation placed upon its property known as 234 Route 6 in the town of Columbia (town) for the revaluation year of October 1, 2006.

The subject property is an automobile dealership known as Columbia Ford. It is composed of four contiguous lots known as Lots 28A, 31, 32 and 33. The lots were separately valued by the assessor, as of October 1, 2006, as follows (listed from highest to lowest value):

| | <u>Size</u> | <u>Assessor's 100% Value</u> |
|--------------------------|--------------------|------------------------------|
| Lot 32 (Parcel #1550) | 1.15 acres | \$1,572,100 |
| Lot 31 (Parcel #1552) | 5.24 acres | \$ 322,700 |
| Lot 33 (Parcel #1551) | 2.73 acres | \$ 120,900 |
| Lot 28A (Parcel #100402) | <u>1.00 acre</u> | <u>\$ 20,300</u> |
| | 10.12 acres | \$2,036,000 |

Although Tourgate brought this appeal challenging the valuation of each of the four lots, Tourgate, at the conclusion of the trial, withdrew the appeal as to Lots 28A and 33, contesting only the valuation of Lots 31 and 32.

Based upon the present use of the subject property as a car dealership, the town's

appraiser, Sean T. Hagearty (Hagearty), was of the opinion that the property, consisting of four lots, had the highest and best use, as improved, as the continuation of the current automobile dealership. Hagearty noted, “[t]his use is considered a conforming use under zoning. The property has been used in this capacity since the early 1970’s and can continue into the future. There are other automobile dealership buildings as well as a few recreational motor sports sales and service properties in the immediate neighborhood. These businesses service the general market area which is less densely developed than communities around greater Hartford to the west .” (Defendant’s Exhibit A, p. 14.)

Kevin E. Bill (Bill), Tourgate’s appraiser, was less concise than Hagearty in concluding that the highest and best use of the subject property, as of October 1, 2006, as improved, was for a revenue-generating commercial, retail, office or light industrial use. See plaintiff’s Exhibit 1, p. 6.

However, the more credible approach in determining the highest and best use of the subject is, as Hagearty opined, the continued longstanding use of the subject as an automobile dealership.

The importance of clearly defining the highest and best use of the property is to aid the appraiser in selecting sales that are truly comparable in developing a market for the subject property. The court notes that “[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. . . . The highest and best use determination is inextricably intertwined with the marketplace because fair market value is defined as the price that a willing buyer would pay a willing seller based on the highest and best possible use of the land assuming, of course, that a market exists for such optimum use. . . . The highest and best use conclusion necessarily affects the rest of the valuation process because, as the major factor in determining the scope of the market for the property, it dictates which methods of valuation are applicable. . . .” (Internal quotation marks omitted.) Milford v. Maykut, 117 Conn. App. 237, 247-48, 978 A.2d 570, cert. denied, 294 Conn. 906, 982 A.2d 1080 (2009).

Bill considered all three approaches to value (cost, market sales and income) to arrive at what he considered to be the fair market value of the subject land with improvements at \$1,000,000, as of October 1, 2006. Bill considered the market sales approach to be the most reliable as an indicator of value. It was Bill’s opinion that the cost approach was the least reliable due to the subject building’s age. Bill found that the income approach was equally unreliable due to “estimated market rental rates and a speculative capitalization rate.” (Plaintiff’s Exhibit 1, p. 14.) Bill, consistent with his definition of highest and best use, selected three sales, none of which are sales of property used for an automobile dealership.

Sale one is located at 157 Boston Post Road in Windham. It is a parcel containing 4.04 acres of land located in a manufacturing zone (M-1). The structures on the property have a gross building area of 22,223 square feet (SF) and are used for retail, a fitness gym and a sports bar.

Sale two is located at 17 Middle River Drive in Stafford. It is a parcel containing a 2-acre industrial-zoned lot with a 20,500-square-foot steel and masonry building. This property has a 23,000-square-foot asphalt parking lot.

Sale three is located at 40 Tolland Stage Road in Tolland. It is a parcel containing a 2.11-acre lot in a commercial industrial zone (C-12).

None of Bill's sales represent the market for an automobile dealership comparable to the subject property.¹

Notably, in Bill's addenda to his appraisal report (see plaintiff's Exhibit 1, p. 18.), he presented a different approach to value from his main appraisal report. Bill introduced the concept that the value of an automobile dealership could be broken down into two segments: 1) the value of the real estate and 2) the value of intangibles, such as good will, non-compete clauses and other intangibles, known in the automobile industry as "Blue Sky."

To do this, Bill took the sale price of an automobile dealership, deducted the value

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"Whenever possible, the property being appraised should be compared with similar properties that have been sold recently in the same market. Potentially comparable properties that do not have the same highest and best use are usually eliminated from further analysis." The Appraisal of Real Estate (12th Ed. 2001) p. 60.

of the real estate which was supporting the dealership by using the income approach, and arrived at the non-realty “Blue Sky” component.

Using the income approach, Bill derived his potential gross income by estimating rents from the comparable sales data compiled in his original appraisal. Bill concluded that these rental rates did not include intangibles.

Although Bill discussed the use of the comparable sales approach and the income approach in this segment of his addenda, what he is really considering, as noted by the plaintiff in its post-trial brief, p. 6, is the use of the going concern approach, also known as the business enterprise value approach, where a deduction is made for the value of intangibles from the total business value, to arrive at the real estate portion of the business. See *The Appraisal of Real Estate* (12th Ed. 2001) p. 27.

As an example of this theory, Bill selected a sale of an automobile dealership located at 120 South Main Street in Colchester on September 16, 2005 for \$1,350,000. Setting aside the sale price, Bill conducted an income approach to value by taking the rental value of this sale at \$15/SF² and multiplied it by the building’s square footage of 10,975 SF to arrive at a potential gross income of \$164,625. Taking a 6% vacancy factor of \$9,878 and total expenses of \$53,951³, Bill arrived at a net operating income of

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On page 19 of plaintiff’s Exhibit 1, Bill’s addenda to his appraisal report, Bill lists a rental value of \$15/SF referring back to his original appraisal report on page 12. However, after a review of this rental data on page 12, this information does not support a basis to conclude a rental rate of \$15/SF.

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Bill’s itemized expenses for this sale included a 10% management fee, taxes, insurance,

\$100,796 which he capitalized at 10% to reach a value of \$1,000,000 (rounded). Bill then deducted the \$1,000,000 value from the sale price of \$1,350,000, which according to Bill, resulted in a non-realty “Blue Sky” value of \$350,000. See plaintiff’s Exhibit 1, pp.18-19.

Bill used a second example of an automobile dealership located at 415-435 South Main Street in Colchester that sold on May 27, 2005 for \$1,500,000. Using the income approach to value, Bill arrived at a value of \$1,120,000 (rounded) which he deducted from the \$1,500,000 sale price to arrive at a non-realty “Blue Sky” value of \$380,000. See plaintiff’s Exhibit 1, p. 20.

The elements of a going concern value are:

Real Property

Personal Property (Furniture, fixtures, equipment and machinery.)

Net Working Capital

Cash and Cash Equivalents such as inventory and supplies and accrued assets

Intangible Property (Contracts, Goodwill, Patents, Copyrights, Workforce, Management Team, Cash, Computer Software, Manuals and Procedures and other Residual Intangibles.)

See Dominion Nuclear v. Waterford, judicial district of New London at New London, Superior Court, Docket No. CV 03 0566126S, November 8, 2007 (*Aronson, JTR*).

The plaintiff’s basic claim, recited in its post-trial brief, p. 5, is that “[t]he Town of Columbia failed to adjust their sales comparisons to account for blue sky and/or going concern values, which resulted in an inflated assessment for the subject property.” The

repairs, reserves and water/sewer.

plaintiff argues that its property is unique⁴, and therefore, the value of intangibles should be deducted from the true market value, which the assessor failed to do.⁵ As noted by the court in Dominion Nuclear, supra, n.13, “[t]he use of the business enterprise value approach is a controversial issue. See D. Lennhoff, A Business Enterprise Value Anthology, Appraisal Institute (2001) p. 66.”

The town’s appraiser, Sean Hagearty, appraised the four parcels listed in the plaintiff’s complaint as having a combined area of approximately ten acres, which Hagearty viewed as supporting the plaintiff’s automobile dealership. Hagearty noted that the subject property, located on the south side of Route 6 just west of the intersection of Routes 6 and 66 in the northern section of Columbia, was valued in its entirety and the value was allocated among the four parcels. Hagearty further noted that three of the parcels are owned by Tourgate Realty, Inc. The fourth parcel is owned by Tourgate Realty, LLC (which is owned by Tourgate Realty, Inc.) and that all four are collectively used to support the automobile dealership Columbia Ford.

Treatment of the four parcels as one single unit implicates the concept of assemblage. “The doctrine of assemblage applies when the highest and best use of

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A unique or “[a] special purpose property is defined as real estate appropriate for only one use or a limited number of uses, whose highest and best use is probably a continuation of its present use.” Sun Valley Camping Cooperative, Inc. v. Stafford, 94 Conn. App. 696, 713, 894 A.2d 349 (2006).

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“Intangible personal property, for tax purposes, has been defined as property which is not itself intrinsically valuable, but which derives its chief value from that which it represents.” (Internal quotation marks omitted.) Dominion Nuclear, supra, n.12.

separate parcels involves their integrated use with lands of another. Pursuant to this doctrine, such prospective use may be properly considered in fixing the value of the property if the joinder of the parcels is reasonably practicable.” (Internal quotation marks omitted.) Sakon v. Glastonbury, 111 Conn. App. 242, 249, 958 A.2d 801 (2008), cert. denied, 290 Conn. 916, 965 A.2d 554 (2009).

Considering the doctrine of assemblage, all four lots were contiguous and formed the basis for the use of this site as the Columbia Ford automobile dealership. As Hagearty noted, the majority of the building improvements were located on two of the three parcels and the remainder of the third parcel was improved with a large paved area for the storage of vehicles. Hagearty considered the fourth parcel to be excess land but potentially could be used as part of the dealership for expansion purposes since it was contiguous to the other parcels.

Hagearty reported that the subject parcels are located in a commercial (C) zone and are currently considered to be in compliance with that zone. Hagearty describes the improvements generally as follows: “The subject complex is used as an automobile dealership that sells and services the Ford automobile line. The showroom was recently remodeled with a village motif complete with individual front facade in front of each sales office as well as a waterfall and lighted walking bridge. The customer waiting area is well appointed with display cases and a restaurant.” (Defendant’s Exhibit A, p. 9.)

Hagearty, finding that the highest and best use of the subject property was for its continued use as an automobile dealership, relied upon the cost approach and the market

sales approach to support his opinion of value. Hagearty did not use the income approach, as did Bill, because, as Hagearty noted, car dealerships are not usually purchased for investment but for an owner's use in the automobile business.

Using the market sales approach, Hagearty considered the sales of buildings containing automobile dealerships located in the towns of Norwich, Colchester and Branford due to the limited availability of sales in the Columbia area. See defendant's Exhibit A, pp. 27-29. Although Hagearty acknowledged that the sale of an automobile dealership would also involve the sale of intangibles such as good will and the sale of personal property such as furniture, fixtures and inventory, which the plaintiff calls "Blue Sky", Hagearty's selection of comparables included only the real estate portion of the sale, not the business portion. As Hagearty noted, the conveyance tax, being a tax on the sale of real estate only, was an important factor in confirming that the selected sales were for real estate only and did not involve the sale of personal property or the sale of intangibles. As an example, Hagearty noted that for sale four, in addition to the sale of the real estate, a separate sale of \$1,000,000 occurred for the personal property and inventory. See defendant's Exhibit A, addenda (in the section on comparable building sales).

It is particularly significant that Hagearty was aware of the issue Bill raised that the valuation of the automobile business would entail a separate valuation of the real estate apart from the valuation of the automobile dealership's personal property and intangibles. Hagearty testified that all selected comparable sales reflect real estate values, not intangible values. Hagearty further testified that the prices paid for the purchase of the

selected comparable sales were for the purchase of real estate, not businesses.

Hagearty selected four comparable sales, all of which consisted of land and buildings used for automobile dealerships. The first sale was located in Norwich. This property sold for \$3,750,000 on May 4, 2007. Sale two was located in the central business district of Colchester. This property sold for \$1,500,000 on May 27, 2005. Sale three was located in the heavily traveled commercial district of Branford. It sold for \$2,200,000 on February 3, 2005. Sale four was located in Colchester and sold for \$1,350,000 on September 14, 2005. Dividing the sales prices by the square footage of the gross building area of the subject improvements, and after making appropriate adjustments to the comparable sales, Hagearty arrived at a fair market value of \$2,650,000 (rounded), as of October 1, 2006. Of particular interest is the fact that both appraisers selected the two sales involving automobile dealerships in Colchester, with Hagearty treating the sales as real estate sales and Bill treating the sales as sales of going concerns.

In addition to using the comparable sales approach, Hagearty used the cost approach to determine the subject's fair market value. Hagearty used Marshall Valuation Service, a nationally recognized cost estimating guide for the construction of the improvements related to dealerships, to determine a replacement cost of \$75-\$80/SF of gross building area for the main dealership building. See defendant's Exhibit A, p. 22. After deducting for the improvements' depreciation, Hagearty settled on a price of \$77.50/SF for the main dealership building. As to the second building, a parts warehouse containing 3,200 SF, Hagearty found a base cost of \$31.87/SF plus a storage mezzanine

cost of \$13.36/SF.

Since the cost approach has two elements, the value of the site and the value of the improvements to the site, it is necessary to examine Hagearty's process in arriving at the subject's site value.

Hagearty's valuation of the subject site was based on the selection of four comparable sales dealing with land purchased for the construction of new dealership facilities. Two of these land sales were in Colchester and two were in Vernon. Using the four sales and making adjustments to the subject for location, size and physical factors, Hagearty arrived at a per acre range of value for the 10-acre site between \$80,000-\$85,000/acre, with a final value of the subject site at \$825,000. See defendant's Exhibit A, p. 20.

Combining the site value of \$825,000 with the overall depreciated improvement and site value of the subject at \$2,022,436, Hagearty arrived at a cost approach value of \$2,845,000. See defendant's Exhibit A, p. 25.

Hagearty reconciled the two approaches, sales and cost, to conclude that the total valuation of the subject ten acres with the improvements was \$2,700,000, allocated to the four parcels as follows (listed from highest to lowest value):

| | |
|---------|-------------|
| Lot 32 | \$1,500,000 |
| Lot 31 | \$ 700,000 |
| Lot 33 | \$ 475,000 |
| Lot 28A | \$ 25,000 |

See defendant's Exhibit A, p. 31.

Given the fact that the plaintiff has withdrawn Lot 28A and Lot 33 from this

appeal, thereby leaving Lots 31 and 32 for consideration, the issue is whether the assessor's fair market valuation of Lot 31 at \$322,700 and Lot 32 at \$1,572,100 have been overvalued for assessment purposes on the Grand List of October 1, 2006.

It is a basic premise in tax appeal cases that the taxpayer has the burden to prove that he or she has been aggrieved by the action of the assessor in valuing the taxpayer's land in excess of its fair market value. See Breezy Knoll Assn., Inc. v. Morris, 286 Conn. 766, 775-76, 946 A.2d 215 (2008).

The court finds that Hagearty's valuation of the subject parcels is the most credible given the fact that Hagearty used comparable sales of property and the elements of the cost approach that were consistent with the highest and best use of the subject as an automobile dealership. The focus of the plaintiff on "Blue Sky" or the intangible part of the automobile dealership was misplaced as a factor in the valuation of the subject property's real estate.

Since Hagearty's valuation of Lot 31 at \$700,000 is far in excess of the assessor's valuation of \$322,700, the plaintiff cannot show aggrievement, and therefore, has not sustained its burden of proof to show aggrievement. As to Lot 32, Hagearty's valuation of \$1,500,000 is less than the assessor's valuation of Lot 32 at \$1,572,100. Since this court has given credibility to Hagearty's valuation process over Bill's, as to Lot 32, the plaintiff has shown aggrievement since the assessor's valuation is \$72,100 higher than Hagearty's valuation.

Accordingly, since the plaintiff has shown aggrievement as to Lot 32 in the amount of \$72,100, judgment may enter in favor of the plaintiff as to Lot 32 only, without costs to either party. Furthermore, plaintiff's appeal as to Lot 31 is denied without costs to either party.

Arnold W. Aronson
Judge Trial Referee