

NO. CV 09 4017045S : SUPERIOR COURT
JANE BERGERE : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
 : AT STAMFORD
v. :
CITY OF NORWALK : AUGUST 8, 2011

MEMORANDUM OF DECISION

The plaintiff, Jane Bergère, brings this real estate tax appeal challenging the determination by the assessor of the city of Norwalk (city) that the fair market value of her property at 27 Bluff Avenue was \$3,194,000 for the revaluation year of October 1, 2008 and subsequent years. See plaintiff’s Exhibit 2 and defendant’s Exhibit D. The board of assessment appeals, following a hearing on the plaintiff’s appeal, reduced the fair market value to \$2,954,100. Id. See also plaintiff’s Exhibits 3 and 4.

The subject property is a 0.44-acre lot, improved with a cottage, that directly fronts Wilson Cove leading into Long Island Sound (the Sound). The lot’s topography is rocky and runs steeply to the shore. The subject is located in the city’s Rowayton section on a heavily trafficked, two-lane divided street leading to the exclusive Bell Island neighborhood. There is an office building across the street from the subject as well as condominium homes located nearby. The city’s appraiser Michael Fazio (Fazio) notes that “[t]here is limited commercial development within the confines of the subject neighborhood, predominantly found along Rowayton Avenue.” (Defendant’s Exhibit A,

p. 4.) There is also a working marina nearby.

Built in 1890 and last renovated in 1981, the subject colonial-style cottage spans 2,584 square feet (SF) with nine rooms, four bedrooms and four baths. It has two fireplaces, a driveway and a one-car garage. In the rear of the cottage, there are decks overlooking the Sound, access stairs to the water and a dock that extends into water which is too shallow to accommodate boats. As plaintiff's appraiser, Michael McGuire (McGuire) noted, "[t]he subject property's overwhelming positive feature is its outstanding view and access to Long Island Sound." (Plaintiff's Exhibit 5, p. 3.)

The plaintiff testified that for many years her family has used the cottage seasonally, in the summer months. The plaintiff further testified that the cottage is poorly insulated and has water damage and settlement in the ceiling.

Fazio further notes that the subject property is in a Residence-B zone permitting single-family residences, but classifies the present use of the subject land as "legal nonconforming (grandfather use)." (Defendant's Exhibit A, p. 2.)

McGuire, in valuing the subject property, concluded that the 118-year-old cottage, in its present condition, had no value, and determined that the fair market value of the subject, land only, as of October 1, 2008, was \$1,720,000.¹

¹

Notably, in her post-trial brief, dated June 20, 2011, p. 6, the plaintiff states that her appraiser, McGuire, did not object as unreasonable assigning the cottage a value of \$157,905, as determined by Fazio.

In stark contrast, Fazio was of the opinion that the subject property, as of October 1, 2008, had a fair market value of \$3,000,000. Although he found the house to be in average condition and in need of an update, Fazio concluded that the cottage did indeed have value, noting that “[t]here are no conditions, which affect the livability, soundness, or structural integrity of the property. The layout of the interior rooms is poor with small hallways and maze-like configuration.” (Defendant’s Exhibit A, p. 2.) The subject’s maze-like configuration is consistent with the subject having 9 rooms, including four bedrooms and four baths spanning 2,584 SF. See defendant’s Exhibit A, p. 1. However, the plaintiff testified that she could not stay in the cottage during the winter months as it was poorly insulated.

The defendant takes issue with McGuire’s conclusion that the highest and best use of the subject property, with the cottage located on it, should be valued as a tear down so that the only thing of value would be the land. The defendant argues that determining the value of the land, without including the value of the cottage, is contrary to the holding in National Amusements, Inc. v. East Windsor, 84 Conn. App. 473, 480-81, 854 A.2d 58 (2004) (taxpayer unsuccessfully appealed the value of the building only, excluding the value of the land as an issue). In the present case, an appeal was taken for the property as a whole. As noted in Abington, LLC v. Avon, 101 Conn. App. 709, 716-17, 922 A.2d 1148 (2007), “[i]t is particularly appropriate . . . that the trial court be permitted to use a flexible approach and not be constrained to adopt one valuation methodology. . . . [T]he court’s ultimate goal is to establish the true and actual value of the subject property”

In the present action, McGuire made a determination that the cottage did not add value to the land and, therefore, the highest and best use of the subject was its use as vacant, after the demolition of the cottage. McGuire's determination of the highest and best use of the subject property is within an appraiser's discretion to distinguish between the use of the subject as vacant land or as property improved with a cottage. If the market value of the subject land is greater with the cottage demolished than it would be with the cottage remaining on the land, an appraiser may make this distinction in choosing the highest and best use of the subject as vacant. See generally, *The Appraisal of Real Estate* (12th Ed. 2001) p. 305.²

In determining the value of the subject as of October 1, 2008, McGuire selected three comparable land sales:

- Land Sale 1: 11 Peabody Lane, Darien
- Land Sale 2: 125 Five Mile River Road, Darien
- Land Sale 3: 34 Sammis Street, in the Rowayton section of Norwalk.

²

“Appraisal theory holds that as long as the value of a property as improved is greater than the value of the land as though vacant, the highest and best use is the use of the property as improved. In practice, however, a property owner who is redeveloping a parcel of land may remove an improvement even when the value of the property as improved exceeds the value of the vacant land. Investors are not likely to pay large sums for the underlying land simply to hold onto the property until the value of the remaining improvement has decreased to zero. The costs of demolition and any remaining improvement value are worked into the test of financial feasibility for redevelopment of the land.” *The Appraisal of Real Estate* (12th Ed. 2001) pp. 306-307.

McGuire described the Peabody Lane property as follows:

“Land sale one is a 1.58-acre parcel with direct waterfront access on Scott’s Cove in Darien. The property sold for \$3,250,000 on April 25, 2008. At the time of sale, the property included the main dwelling (totaling 2,776 [SF]), a three-room cottage, two-car garage, a dock and a boat house. The property was sold in ‘as is’ condition which was characterized by the listing broker as being in fair condition. The buyer, an architect, extensively renovated and upgraded the property after the sale. We consider this a land sale because of the house’s fair condition and waterfront location.” (Plaintiff’s Exhibit 5, p. 3.)

The Peabody Lane sale hardly qualifies as a land sale since the original cottage was not demolished. Under McGuire’s theory, this is a land sale because the purchaser extensively renovated the dwelling as an alternative method of improving the property. Furthermore, McGuire’s report did not indicate what effect the valuation of the house had on the sale price. There are also major differences in size (1.58 acres versus 0.44 acres), location (Darien versus Rowayton), and topography (flat versus rocky and steep) between McGuire’s sale one and the subject.

McGuire described land sale two as follows:

“[A] 1.7-acre waterfront property with a dock on Five Mile River in Darien. The property sold for \$5,250,000 on January 4, 2008. At the time of sale, the property had a 2,859 [SF] garage apartment with one bedroom, a living room and a kitchen. The buyer subsequently demolished the house, subdivided the lot into two lots [0.7-acres each] and

constructed an 8,507 [SF] house on one of the lots (which is currently listed for \$8,395,000). Since the buyer intended and succeeded in subdividing the original parcel into two lots, the sale price per lot was \$2,625,000.” Id.

As to the Five Mile River sale, besides substantial differences in acreage, location, and topography, the other key difference between McGuire’s sale two and the subject is that sale two has a view of a river (see plaintiff’s Exhibit 5, p. 4 and Exhibits 7A-7B-7C), whereas the subject property has an outstanding view of the Sound.

McGuire described land sale three as follows:

“[A] 2.2-acre lot . . . [it is a] family-owned property (Estate of Edward J. Hart) which was sold to Charles Schoendorf for \$4,000,000 in April 2006. According to the listing broker, this was an all cash deal that was sold to the highest bidder in an auction and represented market value at the time. The property included a private dock and access to waterfront with a four bedroom, two and a half bath house built in 1983. . . . [The] property couldn’t be subdivided. Schoendorf subsequently decided not to develop the property and sold it to the Norwalk Land Trust for \$4,000,000 in March 2008.”³

(Plaintiff’s Exhibit 5, p. 3.)

As to the Sammis Street sale, there is simply no comparison between the subject’s

3

McGuire testified that the house at 34 Sammis Street was torn down after the sale. Although this sale was a purported vacant land sale, there is some weight to the city’s argument that it is difficult to accept this sale as an arms length transaction. However, in her reply brief, dated June 21, 2011, the plaintiff emphasizes that McGuire testified he relied on the 2006 estate auction sale to Charles Schoendorf, who reportedly planned to develop the property, not on the 2008 transfer of the land to a charitable land trust.

outstanding view of the Sound and sale three's view of Farm Creek, a tidal wetland.

The city's appraiser, Fazio, relied on the following three comparable sales to conclude that the subject property, as of October 1, 2008, had a fair market value of \$3,000,000.

Fazio's sale one, at 63 Bluff Avenue, is a quarter-acre of land located near the subject and has similar waterfront property and views. The property is improved with an 11-room colonial spanning 3,567 SF. There are 4 bedrooms, 3.1 baths, a fireplace and one-car garage. The property sold on May 8, 2007 for \$3,535,000. While the subject property is a substantially larger lot, the improvements at 63 Bluff Avenue span almost 1,000 SF more than the subject cottage.

Fazio made a negative adjustment of \$350,000 because he reported the condition of sale one to be superior to the condition of the subject, without inspecting the interior of sale one. Fazio's net adjustments totaled negative \$551,375, a 15.6% net adjustment. Considering the nature of the adjustments and comparing the photo of sale one (defendant's Exhibit A, p. 11), to a photo of the subject (plaintiff's Exhibit 5, p. 8), the disparity between the appearance of the subject and sale one is much higher than Fazio's determinations.

Fazio's sale two, at 7 Rocky Point Road on Bell Island, sold for \$4,050,000 on July 10, 2008. This property had 4,110 SF of living space with 11 rooms, 4 bedrooms and 3.1 baths. The expansive living space sits on a 0.11-acre lot, in contrast to the subject's 0.44 acres. A photograph of sale two (defendant's Exhibit A, p. 11), shows why sale two,

an impressive house, is priced substantially higher than the \$3,000,000 value that Fazio determined for the subject.

Fazio's last comparable sale is at 1 Yarmouth Road on Bell Island. It sold for \$3,075,000 on December 19, 2008. The property is located across the street from the Sound but has a great view nonetheless. The house is completely renovated inside and out. There are 6 rooms, including 3 bedrooms and 3.1 baths, with a total gross living area of 2,566 SF. This comparable sits on 0.07 acres of land with no garage.⁴

Regarding the subject cottage, Fazio testified that the cottage was in average condition. In comparison, the three comparables selected by Fazio appear to be substantial homes that were recently built or renovated, and two of the three sales are located on exclusive Bell Island.

McGuire did not dispute Fazio's valuation of the cottage at \$157,905. However, while Fazio included the value of the cottage in his valuation of the subject, McGuire considered that a purchaser of the subject land would tear down the cottage and rebuild so that for valuation purposes, the present assessment should be based on the value of the land only and not include the approximately \$158,000 value of the cottage. There is one problem with McGuire's analysis: Fazio's comment that the subject cottage was a legal non-conforming use.⁵ Without knowing what the nonconforming use is, it is difficult to

⁴

See defendant's Exhibit A, p. 3.

⁵

"Legally nonconforming use: A use that was lawfully established and maintained, but no

determine whether a purchaser may build to conform to current zoning regulations or is restricted to the property's present use.

Recognizing that the subject property enjoys an "outstanding view" and access to the Sound, but that it is not located on Bell Island, where two of Fazio's comparables are located, and given the fact that the subject is located in Rowayton across from a commercial area, nevertheless, the subject 0.44-acre of waterfront property does have substantial value. However, the city's assessor and Fazio have substantially inflated that value. Although there is merit to McGuire's contention that a purchaser of the subject property would tear down the cottage and rebuild at the site, it is not clear to what extent the inherent characteristics of the site, such as the rocky landscape and the current structure's nonconforming use would affect the development of the property and, in turn, its value.

McGuire's opinion that the highest and best use of the subject, as of October 1, 2008, was the land as vacant, flies in the face of the plaintiff's longstanding seasonal use of the cottage. Although a purchaser spending a substantial amount of money to acquire the subject would most likely tear down or substantially rebuild the subject, it cannot be ignored that, from a practical matter, on the revaluation date of October 1, 2008, the plaintiff has continuously used the subject as is. The highest and best use of the subject is

longer conforms to the use regulations of the current zoning in the zone where it is located; also known as a *grandfathered* use." (Emphasis in original.) The Appraisal of Real Estate (12th Ed. 2001) p. 322.

for residential use. Obviously, the subject is being used to its highest and best use. The only difference is in the improvements between the subject and the comparables selected by both appraisers. It is the value of the improvements on the subject lot that distinguishes it from the comparables, not the use to which the lot is put.

Considering the problems with the comparables selected by both McGuire and Fazio, as noted above, the court finds that the fair market value of the land only on October 1, 2008 was \$2,000,000. As to the improvements to the subject property, McGuire agreed with Fazio that the subject cottage with its depreciated value had a value of approximately \$158,000. Fazio's site value of \$250,000, using the cost approach, is unrealistic given the fact that the only site improvement of any worth was the dock located in shallow water (which hinders its practical use).

After giving consideration to all of the relevant factors, the court finds that the total fair market value of the subject, as of October 1, 2008, was \$2,163,000. This value is a result of the court determining that the site value was \$2,000,000, the cottage's value was \$158,000 and the dock improvement was a nominal value of \$5,000.

Accordingly, judgment may enter in favor of the plaintiff, setting the fair market value of the subject property at \$2,163,000, as of October 1, 2008 and subsequent years, without costs to either party.

Arnold W. Aronson
Judge Trial Referee

