

NO. CV 09 4017126S : SUPERIOR COURT
R & F NORWALK, LLC : JUDICIAL DISTRICT
v. : STAMFORD/NORWALK
: AT STAMFORD

BOARD OF ASSESSMENT
APPEALS OF THE TOWN OF
NORWALK : AUGUST 27, 2013

MEMORANDUM OF DECISION

This action is a real estate tax appeal by the plaintiff R & F Norwalk, LLC¹, commonly known as the Raymour & Flanigan furniture store, challenging the city of Norwalk (city) assessor's valuation of the plaintiff's property located at 641 Connecticut Avenue (also known as Route 1) for the revaluation year of October 1, 2008 and subsequent years. The subject is located in a busy and heavily-concentrated retail area with a high traffic count.

The city's assessor valued the subject, as of October 1, 2008, at \$11,484,800. The

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The plaintiff alleges in its operative complaint that R & F Norwalk, LLC was the owner of the subject property, as of October 1, 2008. The plaintiff's witness, James Potocki (Potocki), a senior real estate director for Raymour & Flanigan, testified that R & F Norwalk, LLC owns the subject building, but not the land. In its 6/26/13 brief, pp. 2-3, the plaintiff notes that "[t]itle to the land . . . is held in trust subject to a land lease by and between the trustee and Raymours Furniture Company, Inc. (Tr., p. 6; Exhibit 2.) Said land lease was assigned to the plaintiff, R&F Norwalk, LLC (Tr., p. 11; Exhibits 4 and 5), a sub-entity of Raymours Furniture Company."

plaintiff's appraiser, Stanley A. Gniazdowski (Gniazdowski) valued the subject on the same revaluation date at \$10,000,000. See plaintiff's Exhibit 1, p. 46. The city's appraiser, Robert J. Mulready (Mulready), valued the subject on the same revaluation date at \$12,730,000. See defendant's Exhibit D, p. 59.

The subject property is in a B-1 (Business-1) zone and contains 3.058 acres of land with 333.05 feet of frontage on Connecticut Avenue. The property is improved with a two-story building spanning 58,490 square feet (SF)². The first floor contains approximately 30,252 SF while the second floor contains 28,238 SF. See plaintiff's Exhibit 1, p. 17. The building was specifically constructed in 2006 for Raymour & Flanigan as a retail furniture store.

The first floor contains an entry way and an open atrium rising up through the second floor. As noted by Mulready, "[t]he floor areas are well laid out and very attractive. The space is allocated carefully to allow large numbers of people to shop for furniture in an efficient manner. Rest rooms and emergency exits are well marked for the use and safety of the public." (Defendant's Exhibit D, p. 19.)

In arriving at his opinion of value, the plaintiff's appraiser, Gniazdowski, noted as

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Mulready's appraisal report, defendant's Exhibit D, recites a total building square footage of 58,916 SF, which is slightly higher than that reported by Gniazdowski at 58,490 SF in his appraisal, plaintiff's Exhibit 1. Since Mulready did not testify to substantiate the information contained in his appraisal report and was not subject to cross-examination, the court accepts the square footage of 58,490 SF as reported by Gniazdowski.

follows:

“The subject property is developed as a retail furniture store which is permitted to have a reduced parking requirement under the Norwalk Zoning Regulations. Typical retail development requires twice as much parking. The subject has 150 parking spaces vs. 300 spaces which is required for general retail. This reduced parking requirement diminishes the *utility and demand* of the subject property by not being able to attract a broader spectrum of retail users for the subject property which is limited to retail furniture use. To lease to general retail tenants, the second floor must be eliminated or not utilized for retail or other uses, subject to parking requirements. Furniture stores have a history of closing in weak markets due to reduced demand for furniture.” (Emphasis in original.) (Plaintiff’s Exhibit 1, 3/8/13 letter to Potocki, p. 2.)

Gniazdowski was of the opinion that the highest and best use of the subject property was for retail use consistent with the B-1 zone. See plaintiff’s Exhibit 1, p. 21. This is somewhat surprising given the fact, as opined by Gniazdowski, that the highest and best use of the subject is for retail use when he commented that “[t]he subject property is special purpose furniture retail building with 50% of the required parking of typical retail.” (Plaintiff’s Exhibit 1, p. 31.)

Using the sales comparison approach, Gniazdowski concluded that the improved retail sales indicated that the adjusted sale prices per square foot ranged from \$175 to

\$190/SF. See plaintiff's Exhibit 1, p. 31. Using this range of value, Gniazdowski arrived at a value range of \$10,235,750 to \$11,113,100, with an indicated value of \$10,500,000. See plaintiff's Exhibit 1, p. 32.

Gniazdowski considered five sales under his sales comparison approach method. Two of his sales compare favorably with the current use of the subject as a furniture store. For example, sale three was a sale to Ethan Allen Retail, LLC, a well-recognized furniture store and sale four, which Gniazdowski considered his best comparable, was a sale to La-Z-Boy furniture store.

Sale three was at the low end of Gniazdowski's adjustments at \$175/SF. However, sale three was a much older building constructed in 1969. In comparison, sale four was constructed approximately 37 years later with a building that externally appears to be similar to the subject building.

The city's appraiser, Mulready, was not called by the city to testify although the city submitted his appraisal report, defendant's Exhibit D, as a full exhibit. In his appraisal report, Mulready concluded in his summary of the sales comparison approach as follows:

"The range of price per square foot was initially \$162.21 to \$233.34/SF. After adjustments, the range is \$172.59 to \$209.08/SF. The average price per square foot is \$189.84 yielding a value of \$190/SF x 58,916 SF = \$11,200,000." (Defendant's Exhibit

D, p. 45.)

Mulready selected the following four sales:

3475 Berlin Turnpike Newington, CT

2335 Dixwell Avenue Hamden, CT

25 Shelley Road Haverhill, MA

1225 Worcester Road Natick, MA

None of these selections come close to being comparable to the subject property with regard to square footage, tenant composition and location.

Mulready's highest and best use of the subject as improved was for use consistent with zoning. (Defendant's Exhibit D, p. 29.) The subject property, however, was specially built for Raymour & Flanigan with reduced parking, which is not consistent with the highest and best use of Mulready's comparables.

Turning to the cost approach, Gniazdowski, using Marshall Swift to produce a cost estimate for the replacement of the subject, concluded that the value of the total cost (depreciated) at the rounded amount of \$4,567,000 plus the value of the land at \$5,000,000 (see plaintiff's Exhibit 1, p. 41), brought the total value of the subject, as of October 1, 2008, to \$9,567,000, rounded to \$9,600,000. See plaintiff's Exhibit 1, p. 44.

Gniazdowski considered the cost approach to be the most appropriate method for valuing the subject property. He noted that the cost approach "has limited effectiveness

when improvements are older and/or do not represent the highest and best use of the land as if vacant. The difficulty is in quantifying the physical, functional and external obsolescence, which represent additional variables in the calculation of the cost approach. Therefore, since the subject property is two-years-old as of the date of valuation, the cost approach for determining value was utilized as the primary indicator of value.” (Plaintiff’s Exhibit 1, p. 45.)

Gniazdowski did not consider the income approach to value.³ On the other hand, Mulready considered all three approaches to value in his appraisal report: sales comparison, cost and income capitalization.

Using the cost approach, Mulready arrived at a depreciated cost analysis for the “Big Box” replacement cost of the subject at \$6,385,000 plus his value of the land based on the existing land lease at \$6,000,000, for a total value, as of October 1, 2008, at \$12,385,000. See defendant’s Exhibit D, p. 55.

Given the fact that the subject property was specially built to accommodate a furniture store with two stories and limited parking, it is difficult to accept Mulready’s

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Gniazdowski reported that he did not employ the income approach to value for the following reasons: “The value indicated by this approach would be given important consideration by a potential investor/purchaser of the subject property under today’s market conditions. The subject property is a user special purpose retail type property, which is not primarily valued based on the quantity and quality of its income stream.” (Plaintiff’s Exhibit 1, p. 45.)

conclusion that the valuation of the subject, using the cost approach, could be based on the cost to construct a “Big Box” building.

Mulready, in addition to using the sales comparison approach and the cost approach, also considered the direct capitalization of the income approach to value the subject property. Mulready surveyed market rent by considering tenant income such as that paid by Marshalls, REI, Barnes & Noble, Sports Authority, Crate & Barrel, Home Goods and Big Y supermarkets. See defendant’s Exhibit D, p. 50. However, none of these tenants appear to be representative of a furniture store tenant similar to the subject.

Using the income capitalization approach, Mulready opined in his report that the subject property, as of October 1, 2008, had a value of \$13,440,000. See defendant’s Exhibit D, p. 52.

It is well recognized that “[t]he process of estimating the value of property for taxation is, at best, one of approximation and judgment, and there is a margin for a difference of opinion. . . . There may be more ways than one for estimating the value of such . . . [property] for taxation.” (Internal quotation marks omitted.) Redding Life Care, LLC v. Redding, 308 Conn. 87, 110, 61 A.3d 461 (2013).

Accepting this fact, the sales comparison approach to value in this case is the most credible method to determine the fair market value of the subject, as of October 1, 2008.

Considering Gniazdowski’s sale three Ethan Allen and sale four La-Z-Boy, these

sales represent the best comparables to the subject. However, as recognized by Gniazdowski, sale four was the most comparable of all.

Given the facts derived from these two comparables, the court concludes that the fair market value of the subject property, as of the revaluation year of October 1, 2008 and subsequent years, is \$10,674,425 ($\$182.50/\text{SF} \times 58,490 \text{ SF}$ of GBA).

Accordingly, judgment may enter in favor of the plaintiff, sustaining its appeal, without costs to either party.

Arnold W. Aronson
Judge Trial Referee