

NO. CV 13 6020889S : SUPERIOR COURT
FC STRATFORD TOD, LLC : JUDICIAL DISTRICT OF
v. : NEW BRITAIN
TOWN OF STRATFORD : JULY 27, 2015

MEMORANDUM OF DECISION

The plaintiff, FC Stratford TOD, LLC, appeals the decision of the Board of Assessment Appeals (BAA) upholding the assessor's valuation of the subject property at 1055-1111 Stratford Avenue¹, in the town of Stratford (town) on the Grand Lists of October 1, 2012 and 2013, for the revaluation date of October 1, 2009.²

The present owner purchased the subject property on September 27, 2012 for \$1,251,000. As part of the purchase transaction, the plaintiff paid DOM, LLC the sum of \$999,000 which was payment for an assignment of its contract to purchase the subject property from the seller, Armando Genga L.P. The plaintiff paid a total consideration of \$2,250,000 for the subject land only. On the date of purchase, the property was a vacant

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The subject property "was two separate parcels that merged in 2012 when the plaintiff acquired it and the assessor then taxed it as one parcel. (Defendant's May 11, 2015 brief, p. 1.)

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While the plaintiff brought this appeal in two counts, according to the plaintiff's May 11, 2015 brief, pp. 1-2, count two brought pursuant to § 12-64 was withdrawn.

car dealership with a repair facility, outbuildings and a paved parking lot.

The subject site is located in a commercial neighborhood in the southern section of Stratford with frontage on Stratford Avenue and an easement access from Main Street. Public transportation to all areas of greater Bridgeport is provided by the Greater Bridgeport Transit District. In addition, the Stratford train station is located in the immediate vicinity of the subject with easy access to Metro-North rail transportation. The subject site, containing 3.28 acres, has all utilities and requires minimal site development work for the construction of apartment buildings. On December 11, 2012, zoning approval was granted for a change of zone to a Transit Oriented Development zone.

The town's appraiser, Peter A. Vimini (Vimini) provides a more detailed and descriptive summary of the subject as follows: "Property is located in southern section of Stratford. It is bordered by [I-95] on the north and west, South Avenue to Shore Road on the south, as well as the Housatonic River and Ferry Boulevard on the east. The Stratford Historic District is located in the immediate area. The area is an older section of town, predominately comprised of mixed residential, commercial related uses, as well as historical buildings. The district was listed on the National Register of Historic Places in 1983. Stratford train station is located in the immediate area on Main Street in the north portion of the described area." (Defendant's Exhibit A, p. 6.)

In purchasing the subject property, the plaintiff planned to demolish the car dealership buildings and construct a 128-unit apartment development. At the time of purchase, all permits were in place to construct the 128 units. After the purchase of the site, the plaintiff spent approximately \$280,000 for environmental clean up and demolition, plus another \$250,000 in engineering, surveys, plans, and legal fees for a total of \$530,000. See defendant's Exhibit F, p. 1. As the defendant's appraiser Vimini notes: "Subject development is to consist of a garden-style apartment complex known as '1111 Stratford' containing five, three-story, detached apartment buildings of walk-up design . . . for a total of 128 units. . . . Apartment mix consists of 30 studio units, 67 one-bedroom units, and 31 two-bedroom units. . . ." (Defendant's Exhibit A, p. 1 of the cover letter.)

On October 1, 2011, the assessor determined that the fair market value of the land was \$971,300. See plaintiff's Exhibit 8. The assessor conducted an interim reassessment in 2012 finding that the value of the land, based on 2009 market conditions, was \$5,120,000. See plaintiff's Exhibits 7 & 11, p. 2.³

The plaintiff's appraiser, George M. Shawah, Jr. (Shawah), determined that the fair market value of the subject land only, as of the interim revaluation date of October 1,

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As noted in Albemarle Weston Street, LLC v. Hartford, 104 Conn. App. 701, 709 n.8, 936 A.2d 656 (2007), "an assessor, in his or her watchtower role, has the authority, pursuant to § 12-55, to make certain interim changes in the assessment of properties even absent a 'mistake.'"

2012, was \$2,300,000. The defendant's appraiser, Vimini, concluded that the fair market value of the subject site, as of the interim revaluation date of October 1, 2012, was \$5,760,000.

Shawah considered the highest and best use of the subject land as follows: "Since the project was subsequently approved for a 128-unit housing development. The highest and best use of the property must be considered the property with the existing approvals. . . ." (Plaintiff's Exhibit 11, p. 10.) Vimini also considered the highest and best use of the vacant property as follows: "Highest and Best use is for development in accordance with approvals, plans and specifications in place for a garden-style apartment complex" (Defendant's Exhibit A, p. 14.)

Both appraisers used the market sales approach to value the subject, excluding the cost approach and the income approach. Shawah relied on four sales on a market value per unit as a basis for finding a fair market value of the subject land as of October 1, 2012. The four sales are as follows:

Sale #1 - 1425 Quinnipiac Avenue in New Haven was a 4.03-acre parcel that sold on March 9, 2010 for \$700,000. Shawah commented that the property was a "rolling 4-acre site located in a less desirable residential neighborhood. The site sold with approvals in place for 20 two-bedroom townhouse-style units. The project is known as Hidden Quarry." (Plaintiff's Exhibit 11, p. 14.) With a density of 5 units/acre, this site sold for

\$35,000/unit.

Sale #2 - 62 Armstrong Road in Shelton was a 12.13-acre parcel that sold on January 31, 2008 for \$1,495,000. Shawah commented that this site was “[a] rolling site located in a desirable single-family residential district. Forty detached houses (3 and 4-bedroom) were approved for the site. Superior location, low density.” (Plaintiff’s Exhibit 11, p. 15.) This site sold for \$37,375/unit.

Sale #3 - Huntington Road in Shelton was a 7.07-acres parcel that was sold on November 27, 2007 for \$4,860,000. Shawah commented that this site was an “[a]ttractive rolling site with frontage on Bridgeport Avenue. The property sold with approvals for 99 two and three-bedroom townhouse-style apartments, swimming pool and community center.” (Plaintiff’s Exhibit 11, p. 16.) With a density of 14 units/acre, this site sold for \$49,090/unit.

Sale #4 - 77-79 Reservoir Street in Bethel containing 25 acres was sold on May 30, 2008 for \$1,920,000. Shawah commented that this was “[a] rolling site located in a desirable residential area of Bethel. The project is known as Bethel Meadows. This is a Toll Brothers Property. The site sold with approvals in place for 62 two and three-bedroom townhouse-style units.” (Plaintiff’s Exhibit 11, p. 17.) With a density of 2.48 units/acre, this site sold for \$30,968/unit.

Shawah primarily based his selection of comparables on location, density and unit

mix. He adjusted his four sales down to indicate a market value/unit of \$19,250 for Sale #1; \$17,760 for Sale #2; \$19,640 for Sale #3 and \$17,028 for Sale #4. Shawah placed equal weight on the four sales and was of the opinion that the fair market value of the subject land, as of October 1, 2012, was \$18,000/unit x 128 units or \$2,304,000 (rounded to \$2,300,000). See plaintiff's Exhibit 11, pp. 18-19.

The town's appraiser, Vimini, using the market sales approach, considered twelve sales, four of which are the same comparable sales relied upon by Shawah.

Sale #1 - 19 Trefoil Drive in Trumbull containing 5.62 acres approved for a 60-unit condominium development was sold on March 5, 2008 for \$6,000,000. Vimini commented that the "[s]ite is an interior parcel having only 76.93 feet of frontage along Monroe Turnpike, requiring a long roadway access extending from Monroe Turnpike to the upward northern section. Site slopes upward with steep grades along its southern section. Site work was reported at \$1,894,656. Property sold with all approvals in place for 60-unit development." (Defendant's Exhibit A, p. 20.) With a density of 10.68 units/acre, this site sold for \$100,000/unit. See defendant's Exhibit A, p. 17.

Sale #2 - West Avenue in Milford containing 14.33 acres approved for 32 multi-family units was sold on June 30, 2009 for \$1,370,000. Vimini commented that the "[p]roperty is an irregularly shaped site which required significant fill for development. Site consists of 2.394 acres of wetland, 2.027 acres of conservation area, Conn DOT

ROW- 0.109 acres; Municipal sewage pumping station occupies 0.464 acres and open space of 2.164 acres. Buildable area of site measures 7.172 acres and required road development. Property was approved and developed in 2007 and 2008 as an age-restricted multiple-family development[.] [H]owever, developers had financial problems and subsequently [the] bank took over [the] project. Sale included the development rights and special declarant rights for 32 units. Sale was approved by creditor.” (Defendant’s Exhibit A, p. 22.) With a density of 2.13 units/acre, this site sold for \$42,813/unit. (Defendant’s Exhibit A, p. 17.)

Sale #3 - Huntington Road in Shelton containing 7.07 acres sold on November 27, 2007 for \$4,860,000. Vimini commented that “[t]he site has a right of access appurtenant extending from Bridgeport Avenue; site has a watercourse bisecting property with steep contours requiring bridge construction in two areas of the roadway. Extensive site development costs were incurred. Usable land area equates to 3.5 acres due to wetlands and watercourse as well as buffer zone and conservation areas. Density of 28 units per useable area is achieved. The property was sold subsequent to a protracted negotiation and litigation involving subject and second parcel along Armstrong Road in Shelton. The Armstrong Road parcel was proposed for 320 units and was negotiated and approved for 40 units. The negotiation involved the threat of affordable housing on both tracts.” (Defendant’s Exhibit A, p. 24.)

Sale #4 - Commerce Drive and Bridgeport Avenue in Shelton containing 2.53 acres sold on July 18, 2007 for \$950,000. Vimini commented that “[t]he property was sold in assemblage contingent upon the approval of a twelve-unit multiple family development. The property was improved with two small houses that required removal. Located on Far Mill River - the approvals required significant encroachment of non-encroachment area along the river. The approvals are for conventional town house development. Site has steep slopes from west to east and towards Far Mill River. It has a narrow, elongated shape having 409.52 feet of frontage along Commerce Drive; municipal approval required 0.61 acres deeded to the city of Shelton for open space.” (Defendant’s Exhibit A, p. 26.)

ANALYSIS

The subject site was approved for the construction of a three-story, 128-unit apartment complex located in a mixed residential and commercial area near the railroad station with convenient access to all major highways. There are 30 efficiency units, 67 one-bedroom units and 31 two-bedroom units. The apartments appear to be intended for young, business-oriented tenants that would accept minimal apartment space and no elevator access.

A comparison of the subject site (having the approval of the 128-unit apartment complex), with the sales selected by Shawah, show a minimal connection to the subject.

For the most part, Shawah's selections would attract non-urban, family-type tenants. As an example, Shawah's sales #3 and #4 have club houses and swimming pools as amenities. See plaintiff's Exhibit 11, p. 19. None of the four sales have efficiencies or one-bedroom apartments that make up 75% of the subject's units. When comparing Shawah's sales and the subject, an important disparity is the fact that the adjustments range from 45% to 60%.⁴

For the most part, Vimini's sales lack credibility to determine "fair market value" of the subject as of the date of revaluation. Sale #1 has some similarity to the subject's acreage. However, there are substantial differences when compared to the subject. The challenge for an appraiser is to find comparable sales in order to meet the true test of a sale between a willing buyer and willing seller which results in fair market value.⁵ As noted by Vimini, sale #1 was an interior lot with steep grades resulting in a need for site

⁴ Sale #1 total adjustments of \$15,750 divided by sale price of \$35,000 = 45%
Sale #2 total adjustments of \$17,750 divided by sale price of \$37,375 = 47%
Sale # 3 total adjustments of \$29,450 divided by sale price of \$49,090 = 60%
Sale #4 total adjustments of \$13,940 divided by sale price \$30,968 = 45%

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"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. . . ." (Internal quotation marks omitted.) Sakon v. Glastonbury, 111 Conn. App. 242, 253 (2008), cert. denied, 290 Conn. 916, 965 A.2d 554 (2009).

work at the cost of almost \$2,000,000. In addition, an approval for a 60-unit development was required when compared to the subject 128-unit development. See defendant's Exhibit A, p. 20.

Vimini's sale #2 does not appear to meet the true test of "fair market value" since the sale involved an age-restricted development; the bank stepped into the developer's shoes; and a creditor approved the sale. In addition a municipal sewage pumping station is located on this site. Certainly, not the elements of "fair market value."

Vimini's sale #3 was sold after protracted negotiations and litigation resulting in a proposed 320-unit development being reduced to 40 units based upon a threat to build affordable housing. Again, not the type of comparable one would consider reliable to accept as a "fair market value" sale.

Vimini's sale #4 was a 2.5-acre parcel that was part of an assemblage⁶ in order to obtain the approval of a 12-unit, multi-family development. When matched against a 3.28-acre site and a 128-unit apartment development, there is no comparison between the two.

This case is problematic for the appraisers because they determined comparability based on their finding land sales approved for residential development. These were then

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"The doctrine of assemblage applies when the highest and best use of separate parcels involves their integrated use with lands of another." (Internal quotation marks omitted.) Sakon v. Glastonbury, 111 Conn. App. 249.

valued on a per unit basis. However, since the main focus of the subject was its location to urban means of transportation in order to attract young, employed, single tenants, the unit basis had to be refined to more accurately reflect that 75%⁷ of the subject units were efficiency and one-bedroom units with no elevator access for second and third-floor units. The subject's two-bedroom units reflect the need to accommodate not only the single apartment user for the efficiency and one-bedroom units, but also the two-bedroom units for commuters sharing an apartment.

The selection of sales by both Shawah and Vimini, together with the adjustments made by each, demonstrates the reason why Shawah's valuation is at \$2,300,000 and Vimini's valuation is double Shawah's, at \$5,760,000. Shawah's adjustments, as previously noted, were approximately half of the sales price of his comparables⁸, whereas Vimini's per unit value of \$45,000/unit reflects adjustments of only 5% on sale #2, 10% on sale #3 and 5% on sale #4, as opposed to Shawah's high adjustments. Although Vimini's selection of sales had minimal adjustments, the quality of the sales is an issue since the sales had questionable elements that impinged on being a fair market sale between a willing buyer and willing seller. The court also notes that five of the twelve

⁷ See plaintiff's Exhibit 11, p. 9.

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Such large adjustments result in less reliable indicators of accuracy. See *The Appraisal of Real Estate* (12th Ed. 2001) p. 447.

sales listed by Vimini are either condominium or Planned Unit Development (PUD) sales that are restricted by statute. See, e.g., Breezy Knoll Assn., Inc. v. Morris, 286 Conn. 766, 788, 946 A.2d 215 (2008).

Recognizing that the reason for the assessor's interim revaluation of the subject property was the change in use of the subject site from an automotive dealership with paved asphalt covering to a site approved for the construction of a 128-unit apartment complex, the purchase price paid by the plaintiff for a site with this change in use becomes important in the valuation process. The plaintiff, as purchaser of the subject site on September 27, 2012, paid a total of \$2,780,000 to acquire the property with the site fully approved and ready to construct the 128-unit apartment complex. Of all the comparables selected by Shawah and Vimini, the subject sale, so near the interim revaluation date of October 1, 2012, represents the most accurate determination of fair market value between a willing buyer and a willing seller.

When the valuation of Shawah and Vimini produce such divergent valuations, “[a] trier of fact deciding an appeal . . . may be better served in such situations by accepting that evidence which it finds to be the most reliable and rejecting that which is determined to be unreliable.” Heritage Cablevision v. Board of Review, 457 N.W.2d 594, 598 (Ia. 1990).

Taking into account the input from the appraisers with their wide disparity in

value and the consideration paid by the plaintiff to acquire the subject property fully-approved to start construction of the 128-unit apartment complex, the Court finds that the fair market value of the subject property is \$3,000,000, as of October 1, 2012, trended back to the town-wide revaluation date of October 1, 2009.

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

Arnold W. Aronson
Judge Trial Referee