

NO. CV 09 4027964S : SUPERIOR COURT
EYRE, LLC : JUDICIAL DISTRICT OF
V. : NEW BRITAIN
TOWN OF WOODBURY : MAY 16, 2012

MEMORANDUM OF DECISION

This action is a real estate tax appeal brought by the plaintiff Eyre, LLC, claiming that the assessor for the town of Woodbury (town) overvalued its property for the revaluation year of October 1, 2008.

The subject property covers 15.72 acres and is predominately vacant land. The plaintiff purchased two separate parcels for a total price of \$2,550,000 in November 2007.¹ The first parcel, at 787 Main Street South, was purchased for \$1,650,000. See plaintiff's Exhibit 2. The second parcel, at 807 Main Street South, was purchased for \$900,000. See plaintiff's Exhibit 4.

Through its managing member, Thomas W. Briggs (Briggs), the plaintiff entered into a real estate contract to purchase the 787 Main Street South property on November 24, 2003. See plaintiff's Exhibit 1. This property was encumbered with a lease to

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The defendant's appraiser Christopher Kerin (Kerin) testified that the two parcels were subsequently split and resubdivided. See trial transcript of February 3, 2012 (Tr.), p. 93. The two parcels will hereinafter be referenced as the "subject property."

Corey's, a fast food restaurant, a golf shack and red storage barn. Briggs testified that he intended to continue the fast food restaurant use at the retail center he planned to develop at the site.² The plaintiff entered into a similar contract to purchase the 807 Main Street South property on September 17, 2004. See plaintiff's Exhibit 3.

On November 28, 2006, less than one year prior to the plaintiff's purchase of the subject property, the plaintiff obtained approval from the town's zoning authorities to construct five free-standing buildings with a total of 42,200 square feet (SF) for retail use. The plaintiff also obtained a construction loan from T.D. Bank North to finance the construction of a shopping center. Tr., pp. 33-34. As part of the development, the plaintiff sought the town's approval to include a Dunkin' Donuts store covering 1,500 SF. Tr., p. 43. Briggs testified that an application was filed with the town's zoning enforcement officer in Spring 2008. Tr., p. 45. However, the town's zoning enforcement officer denied the application sometime after the October 1, 2008 revaluation date. Tr., pp. 45, 47.

The subject property is located on the east side of Main Street South, which is also

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Briggs testified that the Corey's fast food use was an "existing nonconforming building, nonconforming use that could be retained on the property." Tr., p. 12. He believed the town would "grandfather" the fast food use. See *id.* As noted in the plaintiff's 4/9/12 brief, the subject property "is located in the Middle Quarter District Zone in the town of Woodbury, which, pursuant to Woodbury Zoning Regulation 5.2.3.1 (C), does not permit the 'fast food and formula fast food restaurants.'" (Citation omitted.) Briggs further testified that Corey's left prior to the plaintiff's purchase of the property because Briggs bought out its lease. Tr., p. 14.

U.S. Highway Route 6, at the corner of Middle Quarter Road. The subject, therefore, has frontage on Woodbury's primary commercial corridor. On the revaluation date of October 1, 2008, the subject property was improved with a foundation for Building A, a 7,760-SF structure, and the first of the proposed five buildings. See defendant's Exhibit A, p. 2. The subject property also contained a dwelling built in 1930 in fair condition which was scheduled for demolition. See *id.*

The subject property is located in the commercial zone MQ-C which requires all development to be subject to site development plan review and the issuance of a special permit by the planning and zoning commission. The town's appraiser Kerin noted that "[t]he Woodbury Zoning Commission issued a Special Permit, Aquifer Protection Permit, and Special Exception for a five-building, 42,200-SF retail development on November 28, 2006. The development is sited towards the front of the property. According to the Town Planner, the approvals do not preclude the developer from submitting an application to develop the rear portion of the property. According to the 10% maximum coverage³, the total allowable building area is approximately 68,475 feet, assuming setbacks can be met." (Defendant's Exhibit A, p. 18.)

On the revaluation date of October 1, 2008, the town's assessor valued the subject

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The plaintiff's appraiser, Alan Budkofsky (Budkofsky), testified that he would characterize this requirement as "pretty restrictive . . . compared to other towns." Tr., p. 60.

property at \$2,850,442. The plaintiff appealed the assessor's valuation to the Board of Assessment Appeals (BAA) and received a reduction in the subject property's fair market value to \$2,387,828.⁴

The plaintiff's appraiser Budkofsky valued the subject property, as of October 1, 2008, at \$710,000. See plaintiff's Exhibit 14, p. 24; Tr., p. 67.

Kerin, the town's appraiser, valued the subject property, as of October 1, 2008, at \$2,440,000. See defendant's Exhibit A, p. 2.

Both appraisers concluded that the highest and best use of the subject property, as of October 1, 2008, was for commercial retail development. Budkofsky's highest and best use as vacant was "to hold for commercial development." As improved, his highest and best use was "to continue its retail development." (Plaintiff's Exhibit 14, p. 16.) Kerin's highest and best use as vacant was for "mixed use development." (Defendant's Exhibit A, p. 20.) Kerin noted as follows:

- "1) Retail development of the site is permitted by zoning. The subject has approvals in place for the construction of five retail buildings totaling 42,200 SF.
- "2) It is physically possible to develop the subject property for retail use. The property has sufficient road frontage, good visibility at a corner site, and no apparent physical barriers to development.

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See plaintiff's Exhibit 13 and plaintiff's 4/9/12 brief, p. 2, n.1.

- “3) Retail development is financially feasible and represents the most profitable use of the subject property as if vacant. There is no alternate use to which the subject property could be put which would yield a higher present value indication as if vacant.”

Id.

Budkofsky’s valuation of the subject property is based upon the use of the market sales approach, selecting three comparables in surrounding towns. See plaintiff’s Exhibit 14, p. 22.

Sale one in Washington is a 24.83-acre vacant parcel located in a residential R-1 zone that sold for \$1,500,000 in December 2010. Sale two in Wallingford was approved for office use and sale three in Cromwell was in an industrial zone. Budkofsky noted that he used sales two and three as comparables because he could not find satisfactory comparables to the subject property in Woodbury. Therefore, Budkofsky looked in the surrounding towns and picked what he considered to be comparable.⁵ Budkofsky’s reluctance to use sales two and three is understandable as these sales were not approved for retail, unlike the subject.

Kerin also used the market sales approach to value the subject property as of October 1, 2008. In doing so, Kerin selected three land sales.

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Budkofsky testified that he believed the comparables were “terrible.” Tr., p. 73. He further testified that he believed “there were no comparables” and that he used the “best available” comparables. Id.

Sale one was for a lot containing 2.05 acres that was zoned for retail use. See defendant's Exhibit A, p. 24. It is located near the subject at 641 Main Street South in Woodbury and sold on June 22, 2005 for \$450,000. Kerin reported that the property was purchased contingent on obtaining approval from the zoning commission for retail development of a 7,800-SF retail building with a lower level. Although this sale is significantly smaller in size at 2.05 acres than the subject's 15.32 acres, sale one mirrors the subject's development for retail use.

Kerin's sale two is a 23.12-acre parcel of vacant land located at 3776 East Main Street in Waterbury. See defendant's Exhibit A, p. 25. It sold on August 1, 2008 for \$2,600,000. Kerin noted that this sale was the main parcel of a development site that included three additional parcels. In total, all the parcels were purchased for \$3,515,000. The site was originally approved for a 360,000-SF development but it was later modified for a 186,050-SF retail center. As this sale bears no resemblance to the subject, it is not comparable for the purpose of valuation.

Kerin's sale three is a 2.33-acre parcel of land located at 229 Main Street South in Southbury. See defendant's Exhibit A, p. 26. It sold on January 6, 2005 for \$575,000. Kerin observed as follows: "Subsequent to the sale, a 10,428-SF retail building was constructed. A planning and zoning application was filed by the purchaser after the sale on January 18, 2005. As of the date of inspection, the building was occupied with

Wachovia Bank and Sleepy's as tenants." Id. Despite the substantial difference in size to the subject, this sale is somewhat similar to the subject property because it was developed for retail use in a similarly-sized town as Woodbury.

After considering the sales selected by both appraisers, the most influential sale is, in fact, the subject's sale itself in November 2007, less than one year before the revaluation date. This sale supports the valuation placed upon the subject property by the BAA as of the last revaluation date. At the sale date, the subject was not raw vacant land but land that had been approved by the zoning commission, issued an aquifer permit and a special exception to permit the construction of five buildings containing a total of 42,200 SF of retail space, with an option to expand the buildings to over 68,000 SF. Furthermore, the plaintiff had secured the financing necessary to make the project viable.

The court recognizes that "the process of estimating value of property for taxation is, at best, one of approximation and judgment, and that there is a margin for a difference of opinion. . . ." (Internal quotation marks omitted.) MacLean v. Darien, 43 Conn. App. 169, 173, 682 A.2d 1064 (1996). However, Budkofsky's opinion of value for the subject property at \$710,000, when the plaintiff purchased the subject for \$2,550,000, less than one year from the date of revaluation, is not credible.

It is well recognized that in a tax appeal, the taxpayer claiming aggrievement has the burden to establish that the assessor has overvalued its property for assessment

purposes. See Ireland v. Wethersfield, 242 Conn. 550, 556, 698 A.2d 888 (1997). In the present action, the plaintiff has failed in its burden of proof to show that it was aggrieved by the BAA's action.

Accordingly, judgment may enter in favor of the defendant town as to all counts in the complaint, denying the plaintiff's appeal, without costs to either party.

Arnold W. Aronson
Judge Trial Referee