

NO. CV 04 041 25 57S : SUPERIOR COURT
MANUEL MOUTINHO, ET AL. : JUDICIAL DISTRICT OF
v. : FAIRFIELD AT BRIDGEPORT
CITY OF BRIDGEPORT : APRIL 11, 2007

MEMORANDUM OF DECISION

Three related plaintiffs initially brought a three-count tax appeal involving three separate properties located in the city of Bridgeport (city). On May 1, 2006, stipulated judgments were entered on counts one and three. The only outstanding tax appeal relates to property owned by Mark IV Construction, Inc. (the plaintiff) located at 1309 Seaview Avenue (hereinafter referred to as the subject property). On November 3, 2006, the plaintiff filed an amended complaint solely appealing the valuation of the subject property for the Grand Lists of October 1, 2003 through 2006.

On the last revaluation date of October 1, 2003, the city determined that the fair market value of 1309 Seaview Avenue was \$2,356,300. The plaintiff contends that the fair market value of the subject property, as of October 1, 2003, was \$1,080,000.

The subject property is a 1.86 acre parcel of land located in a light industrial zone fronting on Seaview Avenue and abutting Yellow Mill Pond. The improvements to the property consist of two buildings. Building one, an office/warehouse, contains 20,636 square feet and was constructed or renovated in 1983. It consists of concrete and block

with two floors above grade and one basement level. With the exception of a small entrance lobby, the first floor is completely unfinished and is currently used for storage. The office is located on the finished second floor. This building has an elevator.

Building two consists of a series of buildings and covers 22,544 square feet. It was constructed at various times and is used as an industrial garage and warehouse. The plaintiff's appraiser, Peter I. Zeidel (Zeidel) describes building two as follows: "The building at the front is the newest and this is a block and prefabricated metal hi-bay garage with an accessory area for offices and tool rooms. This section is built on a concrete slab foundation and has a shallow gable metal deck roof and one overhead drive in door. Behind this section is a section of concrete block construction which is built in part on a concrete slab and in part has a dirt floor. This section has a flat roof. The rearmost section is concrete block construction on a concrete slab with flat roof. . . . Building #2 interior has unfinished walls, ceilings and floors. Lighting is high intensity ceiling hung incandescent units. Heat is suspended space heaters. Plumbing facilities are modest." (Plaintiff's Exhibit 1, pp. 17-18.)

Zeidel further describes the subject property's neighborhood as follows: "The subject property is located on Seaview Avenue on the east side of Bridgeport. The immediate vicinity is characterized by industrial activities such as contractors' yards, warehouse and distribution and outdoor materials storage. To the north are some older manufacturing facilities and the City of Bridgeport is sponsoring a Seaview Avenue Industrial Park. Easterly, Connecticut Avenue and Stratford Avenue are a pair of one way

streets with commercial development in older multi-story street front buildings and side streets are mostly multi-family residential. South of I-95 the area has been cleared for redevelopment, but no new construction has actually occurred.” (Plaintiff’s Exhibit 1, p. 14.)

Yellow Mill Pond is a navigable waterway that runs out to Bridgeport Harbor at Long Island Sound. There is an old wooden dock that runs out from the subject property into Yellow Mill Pond. From a visual inspection by the court, there is no present use of the dock and it adds no significant value to the property.

Zeidel observed that “[t]he subject property is owned by Mark IV Construction Company, Inc. The title was acquired by Quit Claim Deed from Manuel Moutinho as recorded at Volume 2791 Page 165 of the Bridgeport land records on May 3, 1990. Mr. Moutinho is a principal in the Mark IV Construction Company. He had acquired his title to the property by Warranty Deed in 1987. The property has been in use as the business office, warehouse and equipment and materials yard for the construction company since acquisition.” (Plaintiff’s Exhibit 1, p. 11.)

Both appraisers, Zeidel for the plaintiff and Michael Fazio (Fazio) for the city, agree that the highest and best use of the subject property is its continued use as a warehouse and contractor construction yard.

Zeidel used the cost approach and the sales approach to value the subject property as of October 1, 2003. He did not use the income approach since the subject property was owner-occupied. Zeidel considered the sales approach to be most reliable.

In using the cost approach, Zeidel calculated the site value at \$418,500 based on a survey of land sales in which he concluded that the price per acre for the subject 1.86 acres was \$225,000. See Plaintiff's Exhibit 1, p. 27. Turning to the value of the improvements, Zeidel estimated the replacement cost using the Marshall & Swift survey for the local area construction cost factors. For building one, Zeidel used the average cost class B storage warehouse with a square footage of 20,636 to conclude that the depreciated value was \$840,000, after factoring 25% physical depreciation and 40% functional obsolescence. See Plaintiff's Exhibit 1, p. 28.

Using a similar process for building two, but using a good class S service garage with 55% physical depreciation and a low cost class C storage warehouse with 70% physical depreciation, Zeidel concluded that the depreciated value of the garage area was \$240,000 and the warehouse area was \$100,000, for a total replacement value of building two at \$340,000. Totaling the replacement values of building one at \$840,000 and building two at \$340,000, the site value at \$418,500 and yard items valued at \$22,000, Zeidel concluded that under the cost approach, the subject had a rounded value, as of October 1, 2003, of \$1,620,000. See Plaintiff's Exhibit 1, p. 30.

Using the following three sales as a guide, Fazio, the city's appraiser, concluded that the value of the land was \$558,000 or \$300,000 per acre. Sale one, at 35 Union Avenue and 45 Webster Street in Bridgeport, is located in an industrial zone on the Johnson's Creek inlet to Bridgeport Harbor. It was valued at \$257,669 per acre. Sale three, at 946 Ferry Boulevard in Stratford, has water frontage in a commercial zone and

was valued at \$256,410 per acre. Sale two, at Southfield Avenue in Stamford, has frontage on Stamford Harbor and was valued at \$445,267 per acre. The high value attributed to the Stamford comparable stems from the site being sold in May 2000 clear of all buildings in order for the purchaser to change the industrial zone to residential for the construction of an apartment building. This land sale is not a good selection as a comparable for the subject property.

Fazio also used Marshall Valuation Service to value the improvements and arrived at direct costs of \$2,028,519 for building one (office) and \$744,403 for building two (garage) for total direct costs of the buildings in the amount of \$2,772,922. Fazio then added an entrepreneurial profit of 15% or \$447,493. Fazio's total replacement cost new amounted to \$3,430,780 from which he took a total depreciation for the building at 37.5%. Fazio arrived at an improvement value of \$2,009,406 and added the land value of \$558,000, for a rounded grand total under the cost approach of \$2,570,000, as of October 1, 2003.

A comparison of valuations completed by Zeidel and Fazio demonstrates how unreliable it is to use the cost approach in the valuation of the subject property. There is such a disparity in the selection of replacement costs and depreciation rates as to make a choice between one or the other more of a toss of a coin than a credible selection process.

On its face, Fazio's replacement cost new at \$3,430,780¹ places doubt on whether such buildings would ever be built at that cost for use as a construction facility.

A personal inspection made by the court, at the request of both parties, revealed that the premises are used to store heavy construction equipment and materials. The inspection also revealed that the property as a whole was devoted to a one-owner industrial business. On the other hand, the location of the subject property is desirable from the standpoint of using the property for distribution, warehousing and as contractors' facilities as there are a limited number of sites available for industrial use. See Plaintiff's Exhibit 1, p. 24, 42. Furthermore, Zeidel observed that the Bridgeport real estate market was stronger from 1999 through 2003.

Using the comparable sales approach, Zeidel also selected 35 Union Avenue in Bridgeport as a comparable sale. While Zeidel listed the Union Avenue property as having 58,700 square feet of gross building area, Fazio listed this same property as having 57,877 square feet of gross building area. With a sale price of \$2,500,000, Zeidel calculated the price per square foot at \$42.59. Under Fazio's square footage of 57,877 square feet, the price per square foot was \$43.20.

Despite this starting point, Zeidel and Fazio move in different directions. Zeidel concluded that the Union Street comparable required a minus 41% adjustment and determined that the adjusted comparable sales unit price was \$23.94. On the other hand,

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Plaintiff's brief states the corrected total replacement cost new at \$3,285,133. See Plaintiff's brief, p. 19.

Fazio concluded that this same comparable required a plus 25% adjustment and determined that the adjusted comparable sales unit price was \$53.99.

Both appraisers selected 1901 Commerce Drive in Bridgeport as a comparable sale. However, Zeidel misread the sale price from the documents on the deed and reported a sale price of \$2,200,000 when the sale price was, in fact, \$1,100,000 as reported by Fazio. Zeidel calculated an adjusted sales unit price of \$27.43 using a minus 75% adjustment. Fazio calculated an adjusted sales unit price of \$59.67 using a plus 5% adjustment.

Zeidel selected 1725-1729 Main Street in Bridgeport as a comparable sale to the subject. However, Zeidel described this partly retail and partly warehouse property as “unusually compartmentalized” in the warehouse area. (Plaintiff’s Exhibit 1, p. 34.) Zeidel also reported that the financing placed on this property had a 90% loan to value ratio. On cross-examination, it was disclosed that there was a second mortgage placed on this property at the time of sale and a leaseback. This kind of activity takes away from its use as an arms-length transaction.

Zeidel also selected 118 Burr Court in Bridgeport, a 1.31. acre parcel with a 57,000 square foot building, as a comparable. This property was purchased in August 2002 for \$478,000 by a tank removal contractor that obtained a 20-year bank mortgage in the amount of \$382,400 with a balloon after ten years. See Plaintiff’s Exhibit 1, p. 32. Zeidel reported that the building had previously been used by a plastic injection molding operation with 70% of the building used for manufacturing and 30% for warehouse and some office space. It is interesting to note that this comparable was listed for sale at

\$700,000 while the assessor's property record card lists the current value, using the cost approach, at \$2,095,306. See Defendant's Exhibit H.

Robert Palmer, the deputy city assessor, testified that he monitors the status of polluted property in the city and that the Burr Court property was on his list. This may account for the disparity in the value placed upon the property by the assessor and the sale price reported by Zeidel. Zeidel reported that he had inquired about environmental problems and concluded that there was no issue of contamination on the property. On cross-examination, the plaintiff objected to the introduction by the city of a Department of Environmental Protection report. The objection was sustained and the report was marked as Defendant's Exhibit I for identification only. Although Zeidel considered this sale as a good comparable to the subject, the unexplained variance in the sales price from the assessor's valuation affects the credibility of this sale.

Zeidel selected 31-43 Wordin Avenue in Bridgeport, a 1.84 acre parcel of land with a 34,068 square foot building, as a comparable sale. This sale occurred in May 2003 for a sale price of \$900,000. Zeidel reported that the buyer financed the sale with a bank mortgage in the amount of \$765,000. However, the city introduced Defendant's Exhibit J which lists the mortgage in the amount of \$675,000. Zeidel reported that this discrepancy in the mortgage amount was a typographical error. On his comparable sales adjustment grid, Zeidel listed this property in an industrial zone (see Plaintiff's Exhibit 1, p. 40), when this property is in a commercial zone.

Both appraisers selected 35 Union Avenue in Bridgeport as a comparable sale. Fazio selected 44 River Street in Bridgeport. These properties are similar in description and mirror the attributes of the subject property more than any other sales selected by the appraisers.

However, Zeidel used a negative 41% adjustment for 35 Union Street, whereas Fazio used a positive 25% adjustment for the same sale. When one competent appraiser uses a negative adjustment and another uses a positive adjustment, a more conservative and more credible approach would dictate using neither of the appraisers' adjustments to the sale.²

In valuing the subject property, it is more credible to use the midpoint between Zeidel's adjusted market price of \$40.45 per gross building area for 35 Union Avenue and Fazio's price per gross building area of \$43.20. Using this process, the court arrives at an average of \$41.83. Adding this amount of \$41.83 to Fazio's price per gross building area of \$47.83 for the property at 44 River Street results in an average of \$44.83 as the market value of the price per gross building area for the subject, as of October 1, 2003.

Multiplying \$44.83 by the gross building area of the subject property at 43,180 square feet results in a finding by this court of a fair market value of \$1,935,759. Because the assessor's valuation of the subject was \$2,356,300, the plaintiff's property was overvalued by \$420,541 as of October 1, 2003.

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In addition to the 35 Union Avenue sale, the 1901 Commerce Drive property shows a swing in adjustments between Zeidel's minus 75% and Fazio's plus 5%.

The court finds that the plaintiff is aggrieved by the assessor's determination of value on its property as of the last revaluation date. The plaintiff's appeal is, therefore, sustained without costs to either party and judgment may enter accordingly.

Arnold W. Aronson
Judge Trial Referee