

NO. CV 02 0515387S : SUPERIOR COURT
RK NEWINGTON, LLC : JUDICIAL DISTRICT OF
v. : NEW BRITAIN
TOWN OF NEWINGTON : APRIL 8, 2004

MEMORANDUM OF DECISION

The plaintiff, RK Newington, LLC, as of October 1, 2001, was the owner of real property located near the Berlin Turnpike in the town of Newington. The Newington assessor, on that date, valued the subject property for tax purposes at \$2,859,000. The plaintiff now appeals that valuation, claiming that the subject property, on October 1, 2000, had a fair market value of \$800,000.

On September 4, 2001, the plaintiff purchased the subject property, which consists of 14.46 acres of vacant land, from the Caldor Corporation for \$250,000. At the time of this sale, the Caldor Corporation was in bankruptcy. The plaintiff, after the acquisition of the subject property, placed the property on the market through a broker at an offering price of \$1,100,000 without success. The subject property was again listed with a broker in 2003 at an offering price of \$1,060,000 with no results.

The history of this property goes back to the approval of the subdivision of property owned by the Caldor Corporation known as parcel B on a subdivision map. (See Defendant's Exhibit 4.) This subdivision was approved by the Newington town plan and zoning commission on August 25, 1993. (See Defendant's Exhibit 4.)

The defendant's appraiser, Robert J. Mulready (Mulready), describes, in summary, the subject property in his appraisal report as follows. The subject is part of a "campus" known as Newington Fair, which contains three improved parcels. A Toys-R-Us store is located on the Berlin Turnpike, and behind this is a building formerly occupied by Service Merchandise. To the north of Toys-R-Us is a building formerly occupied by a Caldor's store. The building formerly occupied by Service Merchandise is being converted into a Stickley's Furniture store. (Defendant's Exhibit 1, p. 20.)

Mulready goes on to describe the subject as containing approximately 629,878 square feet of land, or 14.46 acres. Mulready further notes that the subject is in immediate proximity to the Berlin Turnpike and can be accessed from a private road that runs through the Newington Fair campus from the Berlin Turnpike or from Masselli Road. The site, which is essentially flat and an irregular rectangle shape, is serviced with telephone, water, sewer, gas and electricity.

Finally, Mulready states that "[t]he subject site has a conservation easement of 1.73 acres of land and a retention/detention basin that measures approximately 3.168 acres. The subject site is impacted by a sanitary sewer easement" (Defendant's Exhibit 1, p. 20.)

The subject property is located in a planned development (PD) zone. Permitted uses in this zone include contractor's equipment sales and service; hotels and motels; light industrial; retail stores and trades, including banks; personal service shops or stores; and business or professional offices. (Plaintiff's Exhibit A, p. 20.) Plaintiff's appraiser,

Gerard H. McDonough (McDonough), noted that the subject property, located in the southerly part of Newington, is “in an area that is primarily developed with multi-tenant, retail oriented uses.” (Plaintiff’s Exhibit A, p. 15.) McDonough further notes that the subject is in close proximity to industrial uses to the north. As an example, McDonough points out industrial businesses such as Aerospace Balancing Company and Ashdown Golf and Teaching Center located on Masselli Road, as well as Newington Auto, Inc.; Dan’s Custom Counters and Formica Work; Hitech Electronics, Inc.; a kennel; a car wash and an auto service shop located nearby on Pane Road. (Plaintiff’s Exhibit A, p. 16.)

Both McDonough and Mulready note that access to the subject property is through a right of way to the south of the subject. This right-of-way connects with Rowley Street, which in turn connects with the Berlin Turnpike. Our review of the various exhibits introduced leads us to conclude that the more feasible public access to the subject is via Masselli Road, not the right-of-way referred to by both appraisers. The right-of-way crosses through private property, as well as two retention ponds on the southerly portion of the subject property. From the standpoint of the use of the subject property for any permitted purpose, we consider Masselli Road as the more credible means of access.

The difficulty with the determination of value of the subject is the selection of the highest and best use of the property. McDonough, as the plaintiff’s appraiser, chose the highest and best use of the subject to be light industrial, such as warehousing and storage, that will compliment the retail uses along the Berlin Turnpike. Mulready, as the town’s appraiser, concluded that the highest and best use of the subject is for retail uses.

There is a large disparity between the thinking of the two appraisers on highest and best use. On the one hand, Mulready stated: “The subject site is located in the

[t]own of Newington within an area containing a mix of retail, office, industrial, warehouses and restaurant usages. There is good access to the subject site over city and town roads and the Berlin Turnpike is approximately 850 . . . feet from the edge of the site. The Berlin Turnpike is a state highway that provides good access to Interstate Route 91 on the north and to the south in Berlin it connects to Route 9 and 72 with further access to I-91 and I-84. Speculative real estate development in the [t]own of Newington is not a driving force. However the development of owner/user or build-to-suit properties, especially in retail is evident. Other alternative usages would be in the retail area, or as a restaurant. The site has a very desirable zoning and a very good location adjacent to the Berlin Turnpike. Given neighborhood land uses, local and regional traffic flow, access and visibility, the financially feasible use of the subject site as though vacant appears to be for retail uses.” (Defendant’s Exhibit 1, p. 22.)

Contrary to Mulready’s statement on uses, McDonough stated: “Considering the vacant Caldor’s store in the subject’s immediate area, the fact that the subject property has never been developed with a retail use, access to the site is via a right of way, visibility is limited, and the subject’s close proximity to industrial uses on the northerly boundary, it was concluded that, as vacant, the most financially feasible and maximally profitable use of the subject site is not retail, and the most likely use is the development of the site with light industrial uses such as warehousing and storage that will compliment the retail uses located along the Berlin Turnpike. This assumption is further supported by commercial real estate brokers that have been actively marketing the site for the past 18 months at asking prices that are nearly half of the subject’s assessment and the property has not sold.” (Plaintiff’s Exhibit A, p. 23-24.) McDonough further notes, “[t]he fact that the property has been listed for a significant period of time by two notable and professional commercial real estate companies in an economic environment that is

similar to the economic climate as of October 1, 2000 and the property has not sold, clearly indicates that the real estate assessment on the subject property is not in concert with the actual market value of the subject property.” (Plaintiff’s Exhibit A, p. 22.)

McDonough, using the sales comparison approach to value and consistent with his selection of light industrial as the highest and best use of the subject, selected three sales he considered comparable to the subject property. His first sale was property at 818 Fenn Road and Commerce Court in the town of Newington. This sale, consisting of 4.22 acres of land in an industrial zone, was sold on February 1, 2002 for \$320,000, or \$75,829 per acre. This property was subsequently developed as an Omar Coffee distributor in line with a use McDonough sees for the subject. Sale two was property located at 817 Commerce Court, Newington. This sale, consisting of 4.53 acres of land in an industrial zone, was sold on March 22, 2001 for \$210,000, or \$46,357 per acre. This property was subsequently used for a Big Sky exercise facility, another use McDonough considers appropriate for the subject. Sale three was property at 816 Hollow Tree Lane, Newington. This sale, consisting of 6.68 acres of land in an industrial zone, was sold on September 11, 2000 for \$405,452, or \$60,696 per acre. This property was subsequently used for Keebler Products.

Mulready, also using the sales comparison approach, and consistent with his selection of retail as the highest and best use of the subject property, selected seven sales he considered comparable to the subject property.

Sale one was 22.39 acres of land in an RC zone¹ located on Day Hill Road, Windsor, Connecticut. This sale took place on October 4, 2000 and sold for \$3,500,000 or \$156,320 per acre. Mulready reports that this land is immediately adjacent to Interstate

¹ Mulready does not define what an RC zone is.

91 and since the date of purchase a Marriott hotel has been constructed on the site. We are surprised at Mulready's comment as to sale one that "[t]he site is not in demand for retail usage," when his premise is that the highest and best use of the subject is for retail uses. (See Defendant's Exhibit 1, p. 25.)

Mulready's second selection is a parcel of 9.53 acres located in an industrial zone on Day Hill Road and Corporate Drive in Windsor. This property is located adjacent to I-91 and sold for \$2,508,130, or \$263,182 per acre on June 28, 1999. Mulready notes that this property is located "in a very large office and industrial park, and is less than five miles from Bradley International Airport. The site is not in demand though for retail usage." (Defendant's Exhibit 1, p. 27.)

The third sale selected by Mulready was an 11.92 acre parcel on Batterson Park Road in Farmington. The property is located in a Professional Restricted zone and has since been improved with a new office building. This property sold on June 21, 1999 for \$2,600,000 or \$218,121 per acre.

Sale four of Mulready's comparables is a 5.74 acre parcel of land purchased by Lowes Home Centers, Inc., on Buckland Hills road near the Buckland Hills mall in Manchester. This parcel sold for \$1,600,000, or \$278,746 per acre, on April 7, 2000. Sale five was also purchased by Lowes Home Centers, Inc., and was combined with sale four. This 14.11 acre parcel, located at 31 Buckland Hills drive, South Windsor, in the area of the Buckland Hills mall, sold on April 14, 2000 for \$6,000,000, or \$425,230 per acre. Mulready states that the indicated per acre value of the assemblage is \$382,872. (See Defendant's Exhibit 1, p. 30-31.)

Sale six, selected by Mulready, is a 12.89 acre parcel located at 125 Buckland Hills drive in South Windsor. This property was purchased by the Target Corporation for \$4,500,000, or \$349,108 per acre. This property is also located in the Buckland Hills

mall area and shares a driveway with Lowes Home Center.

Sale seven is an assemblage of seven individually owned parcels totaling 12.28 acres and having frontage on the Berlin Turnpike and Richard Street in Newington. This assemblage was purchased by the Target Corporation in November, 2002 for \$6,587,000 including demolition costs or \$532,068 per acre in November, 2002.

The comparable sales selected by Mulready have no credible value in determining the fair market value of the subject property on October 1, 2000. As Mulready notes in his "Summary of Sales Comparison Approach," sales one and two are located in an industrial zone "and [do] not command the same value as land that is zoned for retail." (Defendant's Exhibit 1, p. 37.) Sales one and two, however, were not used for industrial use, but rather, hotels were constructed on these sites. While hotels are a permitted use in the PD zone of the subject property, taking into consideration the opinion expressed by McDonough, it is our view that this is not a credible use for the subject. Sale three, located in an office park in a professional zone, restricts any retail development. Sales four, five and six Mulready notes, "are located in a prime retail area to the northeast of Hartford. This area has become a regional shopping area for a large portion of the northeast [section] of the state. Besides having a large mall with three anchor stores, there are several adjacent shopping areas and 'box stores' such as Home Depot and Walmart." (Defendant's Exhibit 1, p. 37.) It is difficult for us to compare the Buckland Hills mall area, a successful regional shopping location, with the Berlin Turnpike area, which has had its fair share of retail stores go out of business, except for sale seven.

We disagree with Mulready's optimistic view of the subject property based on the comparables that he has selected. Mulready's comparables are significantly dissimilar to the subject. Mulready's comparables were for the most part highly visible sites adjoining major highway arteries and near or adjoining major regional retail shopping centers.

The subject property, on the other hand, is a 14.46 acre parcel hidden behind a former Caldor's building off the Berlin Turnpike with approximately one-third of the property unusable and access to the property through a commercial/industrial area serviced by Pane Road and Masselli Road. The subject was purchased on September 4, 2001, almost one year following the revaluation date, for \$250,000 or \$17,289 per acre. The plaintiff has offered the subject property for sale over a two year period following the purchase at a price of approximately \$1,000,000 with no takers. We find credible McDonough's conclusion that "[t]he subject property is a vacant parcel of land located off of the Berlin Turnpike. Although the property's general location is retail oriented, the subject's immediate location is not considered to be a prime retail location, due to the subject industrial-oriented uses located on the north side of the subject property. Also wetland issues, as well as roadways running through the subject site and the limited visibility, compromise the potential retail use of the subject site." (Plaintiff's Exhibit A, p. 31.)

We recognize that although we do not accept the comparable sales selected by Mulready as credible to determine the value of the subject property, it is not the burden of the town, but rather the taxpayer to show that the assessor's valuation of its property was excessive. Ireland v. Wethersfield, 242 Conn. 550, 557-58, 698 A.2d 888 (1997).

Given the location of the subject property and its position between the retail area along the Berlin Turnpike and the light industrial use area to the north, we consider it more credible that the highest and best use of the subject is light industrial tied to retail use. We note from the testimony of Edmund Meehan (Meehan), the Newington town planner, who assists the town plan and zoning commission, that Masselli Road, abutting the subject, extends north to the Newington Industrial Park used for light industry. Meehan considered that uses for the subject could be restaurant services, financial

services, housing by special permit and light industrial use. Meehan considers the Berlin Turnpike corridor a retail corridor rather than industrial use, citing such retail uses as Circuit City, Raymour & Flanagan, Office Depot, Lowes and Walmart. However, these retail stores exist directly along the Berlin Turnpike, not behind it as does the subject. Meehan noted the existence of the vacant Caldor's building adjacent to the subject for over two years and that Bob's Stores, although approved for use in the Caldor's building by the town plan & zoning commission, did not come to fruition.

McDonough points out that there was a sale of the Service Merchandise store, a 50,818 square foot building sitting on seven acres and located on the south side of the subject. This property sold on March 17, 2003 for a reported sales price of \$2,450,000, although the assessor had determined the fair market value of this property to be \$3,780,400. (Plaintiff's Exhibit A, p. 22.) McDonough considered that this sale of a 50,818 square foot building along the Berlin Turnpike, in close proximity to the subject, although subsequent to the October 1, 2000 assessment date, indicates the value of the subject, containing land only, should be substantially lower than the \$2,859,000 value placed on the subject by the assessor. Considering this sale, McDonough used the "extraction process" to value the sale of the seven acres of the Service Merchandise land at \$678,000 or \$96,857 per acre.² This method does not produce conclusive value. The Appraisal of Real Estate (10th Ed. 1992) p. 304. This method is also not one of the recognized approaches in determining the value of real estate. See Four D's, Inc. v. Mattera, 25 Conn. App. 308, 315, 594 A.2d 484 (1991).

Finding, as we have, that the highest and best use for the subject property, as of

²"Extraction is a variant of the allocation method in which land value is extracted from the sale price of an improved property by deducting the value contribution of the improvements, which is estimated from their depreciated costs. The remaining value represents the value of the land." The Appraisal of Real Estate (10th Ed. 1992) p.304-05.

October 1, 2000, was for light industrial use consistent with the Planned Development zone in which the subject is located, we must next determine whether the plaintiff is an aggrieved party. United Technologies Corp. v. East Windsor, 262 Conn. 11, 23, 807 A.2d 955 (2002). This amounts to a two step process. *Id.* The first step is to determine whether the plaintiff is aggrieved by the action of the assessor in his valuation of the subject. In this regard, we find that the fair market value of the subject as of October 1, 2000 was substantially less than the value placed on the property by the assessor. Considering that the improved Service Merchandise property sold for \$2,450,000 and the vacant land of the subject was valued at \$2,859,000, it becomes obvious that the subject property was overvalued by the assessor.

The determination of the fair market value of the subject property as of October 1, 2000 is, at best, a difficult task. This task is made more difficult because of the following factors: the sale of the subject in September 2001 for \$250,000, or \$17,289 per acre; the plaintiff's attempt to market the subject for over one million dollars; and McDonough's valuation of \$800,000. Although the extraction process used by McDonough to provide a value of \$96,857 per acre for land on the south side of the subject is not a recognized method of valuation, we believe it is appropriate to give it some weight in conjunction with all of the other facts that are before the court. We set forth these considerations because we are struggling with the low valuation arrived at by the plaintiff's appraiser, the high valuation found by the defendant's appraiser and our own recognition that the value of the subject lies somewhere in between. We further recognize that "the process of estimating the value of property for taxation is, at best, one of approximation and judgment, and that there is a margin for a difference of opinion." MacLean v. Darien, 43 Conn. App. 169, 173, 682 A.2d 1064, cert denied, 239 Conn. 943, 686 A.2d 122 (1996). We also note that we are not arbitrating the differing opinions of the appraisers, but rather our mission is to make a determination of value "in the light of all of the circumstances, the evidence" and our own general knowledge of real estate values. *Id.*, 173-74.

For the above reasons, we conclude that the fair market value of the subject property, as of October 1, 2000, was \$100,000 per acre or \$1,446,000. This value, at a per acre price, takes into consideration that approximately one-third of the property contains a conservation easement and retention basins.

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

Arnold W. Aronson
Judge Trial Referee

