

NO. CV 02 0562437S

: SUPERIOR COURT

BENCHMARK NIANTIC SENIOR
HOUSING, INC.

: JUDICIAL DISTRICT OF
: NEW LONDON
: AT NEW LONDON

v.

TOWN OF EAST LYME

: MARCH 3, 2005

MEMORANDUM OF DECISION

This is a real estate tax appeal pursuant to General Statutes ' 12-117a in which the plaintiff, Benchmark Niantic Senior Housing, Inc. (Benchmark), contests the valuation placed upon its real estate located at 417 Main Street, East Lyme (Niantic) as of the last revaluation date of October 1, 2001.

On October 1, 2001, the assessor for the defendant town of East Lyme determined that the fair market value of 417 Main Street was \$7,509,500. The plaintiff=s appraiser, Thomas C. Morrow (Morrow), concluded that, as of October 1, 2001, the subject property had a fair market value of \$5,000,000. The town=s appraiser, Stephen R. Flanagan (Flanagan), concluded that, as of October 1, 2001, the subject property had a fair market value of \$7,574,000.

417 Main Street is located in the Niantic section of the town of East Lyme.

Referred to as ACrescent Point at Niantic,@ the subject property is an assisted living

facility containing forty-two assisted living units and twenty-four Alzheimer units for a total of sixty-six units. The subject property is located in a ACB@ commercial district that permits assisted living use.

The subject land was purchased by Benchmark on December 22, 1999, for \$825,000.¹ The subject is located on land in the southerly section of East Lyme consisting of 2.16 acres. The subject property has a side access on Lake Avenue. Pennsylvania Avenue, also known as Connecticut Route 161, is nearby. Main Street, also known as Connecticut Route 156, runs close to and parallel to Niantic Bay in Long Island Sound. The subject site has reasonable access to Interstate 95.

¹

Morrow reported that the subject was purchased for the consideration of \$750,000, reflecting the land acquisition. Flanagan reported the consideration for the subject to be \$963,893. The conveyance tax on the deed transferring title to Benchmark on December 22, 1999, reflects a consideration paid on a purchase price of \$825,000. (See Defendant=s Exhibit 4; Defendant=s Exhibit 1, p. 5.) Apparently the property had a building on it at the date of sale that was demolished after the closing. Morrow=s value of \$750,000 appears to exclude the value of the building from the value of the land. (See Plaintiff=s Exhibit D, p. 6.) Flanagan=s valuation of \$963,893 comes from discovery, including interrogatories. (See Defendant=s Exhibit 1, pp. 23-24; Defendant=s Exhibit 7.)

A special permit to develop the subject property for assisted living use was obtained on December 14, 1999, prior to the date of closing of title on December 22, 1999. Benchmark started construction of the assisted living facility in the year 2000 and completed the construction with the opening of the building on March 3, 2001. The building itself is a three-story residential assisted living facility with a total area of 48,740 square feet. The forty-two assisted living units are broken up into twelve studio type units, containing 335 square feet of space; twenty-six one-bedroom type units, ranging from 468 to 563 square feet of living space; and four two-bedroom units, having between 648 and 758 square feet of living space. The twenty-four Alzheimer units have sizes between 263 and 331 square feet of living space. (See Plaintiff=s Exhibit D, p.45.)

The first floor of the subject building is comprised of an entry reception/waiting area, lounge, mechanical room, staff room, conference rooms, facility kitchen, main dining room with exterior dining terrace, resident rooms and a [twelve]-unit Alzheimer wing with country kitchen [and] lounge/dining area. . . .

The second level contains a [twelve]-unit Alzheimer wing, Alzheimer dining area, multi-purpose room, computer lounge, sitting area and resident units.

The third level contains resident rooms, mechanical room, laundry room, TV lounge, etc. The third floor area over the Alzheimer wing is unfinished attic space. . . .

The subject property has good overall utility for its current utilization as an assisted living/Alzheimer facility. The configuration results in an efficient layout. (Plaintiff=s Exhibit D, pp. 33-34.)

The cost to construct the assisted living facility in 2001 was \$6,627,318. This amount consisted of hard construction costs and soft construction costs. (See Defendant=s Exhibit 7; Defendant=s Exhibit 8.) These construction costs relate only to the real estate. The additional costs to Benchmark in completing the development of the facility as a business consisted of machinery, office equipment, furniture and fixtures totaling \$367,351. These figures come from Benchmark=s audited financials. (See Defendant=s Exhibit 7.)

Both Morrow and Flanagan concluded that the highest and best use of the subject property as of the October 1, 2001 revaluation was its continued use as an assisted living facility. The court agrees with this conclusion.

Plaintiff=s appraiser, Morrow, was of the opinion that the income approach was the only credible approach to the determination of the fair market value of the subject as of October 1, 2001, to the exclusion of the cost approach and the market sales approach. Morrow did not use the market sales approach because of what he viewed to be a lack of arms-length transactions. (Plaintiff=s Exhibit D, p. 39.) The reason Morrow excludes the cost approach is he believes that it entails subjectivity in the estimation and allocation of depreciation and is not considered to be a reliable indicator of value in the appraisal of specialized complex facilities that suffer from physical deterioration, functional obsolescence, and/or economic obsolescence.@ (Plaintiff=s Exhibit D, p. 38.) Morrow goes on to say that A[t]he subject property was constructed in 2000, and exhibits minimal physical depreciation and functional obsolescence, but suffers from economic

obsolescence.@ (Plaintiff=s Exhibit D, p. 38.) It is obvious that Morrow=s conclusion that the cost approach cannot be used because the property suffers from economic obsolescence would lead him to the conclusion that the only viable method to determine the value of the subject as of the last revaluation date would be the income approach.

Morrow claims that the economic obsolescence he refers to was caused by an over-saturation of the assisted living facility market. If Morrow=s premise is that the subject suffered from economic obsolescence when it was constructed, one would question the decision of the plaintiff, knowing these economic conditions, to build in the first place. In fact, the economic conditions existing on October 1, 2001, were not as bleak as posed by Morrow. The occupancy rate of the subject in 2002 peaked in November at 98.5 percent. It is also interesting to note that the occupancy rate of the subject continued in the 90 percent range in 2003. The Alzheimer units occupancy rates stayed consistently higher than the assisted living units and peaked in November of 2002 at 104.2 percent occupancy. (See Defendant=s Post-Trial Brief, dated December 6, 2004, p. 4.) Both appraisers agreed that the market area for an assisted living facility is within a fifteen to twenty mile radius around the facility. Morrow points out that the subject is not only a modern assisted living facility, but in addition, is located in an affluent community. (Plaintiff=s Exhibit D, p. 55.) Flanagan noted that there was no economic obsolescence in the subject=s primary area because the assisted living facilities within that area were all doing well. (See Defendant=s Post-Trial Brief, dated December 6, 2004, pp. 8-11.)

Morrow=s basis for saying that the subject suffered from economic obsolescence comes from his examination of assisted living facilities located outside of the subject=s primary area. For example, of the facilities Morrow examined to support this point, three were located in Hamden and three in Rocky Hill. (See Plaintiff=s Exhibit D, p. 28.) There is no credible evidence to support Morrow=s conclusion that the subject=s primary area was over-saturated with assisted living and Alzheimer facilities.

Since the subject property was constructed near the date of revaluation, in this instance the best evidence of the value of the subject property as of October 1, 2001, would be the cost approach. As noted in *The Appraisal of Real Estate* (12th Ed. 2001) p. 354, A[t]he cost approach is most applicable in valuing new or proposed construction when the improvements represent the highest and best use of the land and land value is well supported.@

Although Flanagan, in considering the cost approach, used the land costs supplied by Benchmark at \$963,893.41, the more accurate figure of \$825,000 should be used since there were some initial site preparation costs associated with the demolition of the building existing on the subject land at the time of sale. Benchmark also provided the construction costs for the facility, as previously discussed, at \$6,627,318. Simple mathematics puts the total land and construction costs at \$7,452,318.

The fair market value of the subject property as of October 1, 2001, using the cost approach, is \$7,452,318, or \$57,182 lower than the assessor=s \$7,509,500 valuation.

Accordingly, with the court=s finding of fair market value of the subject on October 1, 2001 at \$7,452,318, the plaintiff has been shown to be aggrieved by the valuation placed upon its property by the assessor. Therefore, the plaintiff=s appeal is sustained.

Arnold W. Aronson
Judge Trial Referee