

NO. CV06 4016203S : SUPERIOR COURT
NGC REALTY, LLC : JUDICIAL DISTRICT OF
 : FAIRFIELD AT BRIDGEPORT
v.
TOWN OF FAIRFIELD : MAY 25, 2010

MEMORANDUM OF DECISION

This is a real estate tax appeal by the plaintiff, NGC Realty, LLC (NGC), challenging the valuation placed upon its property located at 350 Jennings Road in the town of Fairfield (town) by its assessor. The subject property is a three-bay gasoline service station located on 0.85 acres of land at the corner of Black Rock Turnpike and Jennings Road. As of the revaluation year of October 1, 2005, the town's assessor valued the subject premises at \$1,291,800.

The subject premises has a pre-existing, non-conforming use in a Neighborhood Designed Business District (NDBD) zone. As noted by the town's appraiser, Kathy A. Chapman-Bakal (Chapman-Bakal), the subject property consists of a "one-story building, in average condition, containing three garage bays and a convenience store. The improvements were built in 1964 with a total of 1,731 square feet of gross building area. Other site improvements include two gasoline pumping islands, covered by a 1,200 SF canopy." (Defendant's Exhibit A, p. 3.) Chapman-Bakal further noted that the gasoline service station is located in a commercial and residential neighborhood and has an

average daily traffic count of 14,000 vehicles along Black Rock Turnpike. See defendant's Exhibit A, p. 17.

Gary Ceraso, the sole member of NGC, was a franchisee of Texaco Refining & Marketing and operated the subject gasoline service station since 1992. As a result of a corporate merger with Texaco, in 2003 Motiva Enterprises, LLC (Motiva) listed the subject property for sale at \$1,100,000. On August 24, 2005, NGC purchased the property for \$725,000.¹

Although the town's assessor valued the subject premises at \$1,291,800 as of October 1, 2005, the town's appraiser, Chapman-Bakal arrived at a fair market value of the subject, as presently improved, at \$1,000,000 using the cost approach and the sales comparison approach. Using the cost approach, Chapman-Bakal valued the land at \$920,000 and the improvements at \$143,350 (\$286,701 replacement cost new with 50% depreciation), to arrive at a (rounded) total value of \$1,060,000. See defendant's Exhibit A, p. 35.

The plaintiff presented Mr. Ceraso as its only witness to testify as to the value of the subject property.² See plaintiff's post-trial brief, dated May 5, 2010, relying on

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Motiva retained a right of entry pursuant to an access agreement recorded on the Fairfield land records on August 24, 2005. See defendant's Exhibit B. The access agreement provides Motiva with the right of entry for the purpose of containment of environmental problems arising from underground fuel storage tanks.

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The parties have not raised the issue of whether a sole member of a corporate entity qualifies as an owner to testify to the value of the corporate asset.

McCahill v. Town & Country Associates, Ltd., 185 Conn. 37, 41, 440 A.2d 801 (1981), for the proposition that an owner of property may testify about the value of the property.³

The plaintiff's basis for challenging the assessor's valuation of the subject gasoline service station is straightforward. Prior to the revaluation date of October 1, 2005, the plaintiff purchased the subject property for \$725,000 on August 24, 2005. The sale price was substantially below the assessor's valuation of \$1,291,800. The plaintiff allocated the sale price of \$725,000 as follows: \$625,000 for the real estate and \$100,000 for the equipment, underground tanks, pumps and service island.

The town counters that the sale of the subject to the plaintiff was not an arms-length transaction that qualifies as market value because Motiva was divesting of several gasoline service stations in the area. However, it should be noted that Chapman-Bakal's comparable sale one, which she considered to be an arms-length transaction, was sold by Motiva on February 23, 2004 to Ali Ventures, LLC for \$800,000 and financed with a \$1,000,000 mortgage. See defendant's Exhibit A, p. 38. Furthermore, the plaintiff's claim that the sale of the subject was indeed an arms-length transaction is credible as the property was listed at \$1,100,000 for approximately two years before NGC purchased it for \$725,000.

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See e.g., Pestey v. Cushman, 259 Conn. 345, 364, 788 A.2d 496 ("it is undisputed that homeowners are qualified to testify as to their personal opinion regarding the value, or diminution in value, of their properties. This rule reflects . . . the common experience that an owner is familiar with her property and knows what it is worth"). (Citation omitted; internal quotation marks omitted.)

The court notes that the town’s appraiser Chapman-Bakal did not consider the sale of a gasoline station at 721 Kings Highway⁴ in Fairfield to be a comparable sale to the subject property. The town sought to justify Chapman-Bakal’s exclusion of 721 Kings Highway as a comparable sale when the assessor testified that its lower valuation at \$736,000 was due to its periodic flooding. Most interestingly, the 721 Kings Highway gasoline station was of a similar size to the subject gasoline station with a gross building area of 1,842 square feet and a gross land area of 13,650 square feet.

Although the plaintiff contends that Chapman-Bakal’s appraisal did not support the assessor’s valuation, there is no affirmative burden on the part of the town to defend the assessor’s valuation. See Ireland v. Wethersfield, 242 Conn. 550, 558, 698 A.2d 888 (1997).

“In a § 12-117a appeal, the trial court performs a two step function. The burden, in the first instance, is upon the plaintiff to show that he has in fact been aggrieved by the action of the board in that his property has been overassessed. . . . Only after the court determines that the taxpayer has met his burden of proving that the assessor’s valuation was excessive . . . may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains. . . . If a taxpayer is found to be aggrieved . . . the court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the applicant’s

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See plaintiff’s Exhibit 5, the town assessor’s property card for 721 Kings Highway.

property.” (Internal quotation marks omitted.) J.C. Penney Corp. v. Manchester, 291 Conn. 838, 844-45, 970 A.2d 704 (2009).

There are several factors that guide the court’s finding that the plaintiff has established aggrievement in this case: (1) the plaintiff purchased the subject premises shortly before the 2005 revaluation date; (2) the sale appears to be an arms-length transaction; and (3) the town’s appraiser was of the opinion that the subject premises had a fair market value of \$1,000,000, as of the revaluation date, which is substantially below the assessor’s valuation. Since the plaintiff has sustained its burden of showing aggrievement, the second step is to determine the fair market value of the subject as of October 1, 2005.

Chapman-Bakal, the town’s appraiser, used the cost approach and the comparable sales approach to arrive at her conclusion of market value for the subject at \$1,000,000. A review of Chapman-Bakal’s cost approach analysis shows dissimilarities between the land sales selected and the subject land.

As an example, of the three land sales selected, sale one has a -85% net percent adjustment and sale two has a -65% net percent adjustment. Such large adjustments raise a serious question as to whether the comparable sales selected are truly comparable to the subject. See *The Appraisal of Real Estate* (12th Ed. 2001) pp. 446-47. None of the three land sales used for comparison purposes were purchased for use as a gasoline service station, which would be consistent with the highest and best use of the subject property.

Therefore, the court finds that the cost approach is not helpful in determining the subject property's fair market value.

In considering the sales approach, Chapman-Bakal selected four gasoline service stations as comparable sales to provide a more credible analysis for the determination of the subject's market value.

Sale one was a gasoline service station that sold on February 23, 2004 in Fairfield for \$800,000 on a site with a gross building area of 1,596 square feet. Sale two was a gasoline service station that sold on November 4, 2004 in Darien for \$810,000 on a site with a gross building area of 1,797 square feet. Sale three was a gasoline service station that sold on October 30, 2003 in downtown Stamford for \$750,000 on a site with a gross building area of 1,689 square feet. The fourth sale was a gasoline service station that sold on May 16, 2003 in Westport for \$785,000 on a site with a gross building area of 1,260 square feet. As a comparison, the subject was a gasoline service station that sold on August 24, 2005 in Fairfield for \$725,000 on a site with a gross building area of 1,731 square feet.

Analyzing the four sales selected by Chapman-Bakal on the adjustment chart shown on defendant's Exhibit A, p. 48, there is little difference between the sales as supported by the minimal adjustments made. As noted by Chapman-Bakal, "[t]he subject property as improved was compared to four sales of improved service stations having similar characteristics and located in comparable alternative locations. The sales were

chosen based upon similarity of use, timeliness of sales activity and location issues.”

(Defendant’s Exhibit A, p. 49.)

In arriving at a final value of \$1,000,000, Chapman-Bakal took the highest and lowest adjusted price per square feet of gross building area, \$618.03 and \$532.86, respectively, and computed the mean (average) of \$575.47 and the median of \$575.49, resulting in an indicated subject value of \$575/sq. ft. of gross building area. This amount was then multiplied by the subject’s gross building area of 1,731 to total \$995,325 and rounded to \$1,000,000. See defendant’s Exhibit A, pp. 48-49.

It is interesting to note that the unadjusted price per gross building area of Chapman-Bakal’s four comparable sales, as compared to the adjusted sales, were as follows:

<u>Unadjusted Sales</u>	<u>Adjusted Sales</u>
Sale #1----- \$501.25	Sale#1-----\$610.53
Sale #2----- 450.75	Sale#2-----\$540.45
Sale #3----- \$444.05	Sale#3-----\$532.86
Sale#4------\$623.02	Sale#4------\$618.03

Given the fact that all of the comparable sales, including the subject and 721 Kings Highway, were all sold for \$810,000 or less, it is difficult to accept subjective adjustments that substantially raise the original price per square foot of gross building area to the adjusted price per square foot of gross building area. As noted in Uniroyal, Inc.

v. Board of Tax Review, 174 Conn. 380, 385-86, 389 A.2d 734 (1978), “[f]air market value is generally best ascertained by reference to market sales.”

Since Chapman-Bakal acknowledges the similarity of the comparables, it is more credible to use her process while relying on the objective findings of the original price per square foot of gross building area, not the subjective adjusted price. The average of the four comparables’ original price per square foot of gross building is \$504.77. When this amount is multiplied by the subject’s gross building area of 1,731, a final value of \$873,753 results. This finding, that the fair market value of the subject, as of October 1, 2005 was \$873,753, is consistent with the unadjusted sales price of all of Chapman-Bakal’s comparables, not the \$1,000,000 value which is far in excess of the four comparable sales.

Accordingly, judgment may enter in favor of the plaintiff, without costs to either party, setting the fair market value of the subject property, as of October 1, 2005, at \$873,753.

Arnold W. Aronson
Judge Trial Referee