

NO. CV02 0515611S : SUPERIOR COURT
WOODGATE II LIMITED PARTNERSHIP : JUDICIAL DISTRICT OF
 : NEW BRITAIN
v.
TOWN OF ENFIELD : MARCH 17, 2005

MEMORANDUM OF DECISION

This is a real estate tax appeal by the plaintiff, Woodgate II Limited Partnership, concerning the valuation on the October 1, 2001 grand list of a 208 unit garden-style apartment complex located in the town of Enfield.

The subject was originally valued by the town, as of the date of the last revaluation on October 1, 2001, at \$9,018,000. However, the board of assessment appeals for the town of Enfield reduced the valuation to \$8,320,000. The plaintiff claims that the value of the subject property as of October 1, 2001, should be \$7,657,400.

The subject property was acquired by the plaintiff on January 11, 1985 by quit claim deed that recited no conveyance tax paid. The plaintiff's appraiser, Stephen J. Massenberg (Massenberg), noted that the 208 unit apartment complex was constructed in 1986. The 208 units, containing a total gross building area of 160,000 square feet, consist of 108 efficiency units, 70 one-bedroom units and 30 two-bedroom units. The subject apartment complex was built on approximately 18 acres of land on Gateway Drive, a

private road maintained by the plaintiff located westerly of Route 5 and northerly of Orlando Drive.

The complex is made up of eleven apartment buildings and a one-story office/utility/storage building, containing 1,764 square feet of gross building area. The efficiency units have two rooms and one and a half baths. The one-bedroom units have three rooms and one bath. The two bedroom units have three rooms and two baths. There are 325 on-site blacktopped paved parking spaces located on the property. The subject has landscaping, concrete walks, yard lights and a swimming pool. The subject further has all of the usual utilities, including water, gas, electricity and telephone service, as well as sanitary sewers directly available to the property. Woodgate at Enfield and The Hamlet at Enfield are neighboring apartment complexes.

The subject property was originally financed with a mortgage from the Connecticut Housing Finance Authority (CHFA) at an interest rate of 10 percent. The initial capital contribution made by the property owner was \$1,866,000. The final CHFA mortgage was \$9,350,000. The CHFA financing came with a number of restrictions. For example, at least 20 percent of the units must be rented to tenants whose income is less than 80 percent of the median income in Hartford County, CHFA approval must be obtained before removing equity or obtaining secondary financing, and the property may not be conveyed without CHFA approval.

The plaintiff's appraiser, Massenber, based upon the use of the sales approach and the income approach, concluded that the fair market value of the subject property, as of

October 1, 2001, was \$7,657,400. On the other hand, the defendant's appraiser, Stephen R. Flanagan (Flanagan), concluded that the fair market value of the subject property, as of October 1, 2001, also using the sales approach and the income approach, was \$9,000,000. Both Massenberg and Flanagan agreed that the highest and best use of the subject property as of October 1, 2001, was its present use as a multi-unit residential rental property. This court agrees with that conclusion.

Considering the sales approach, Massenberg relied on three sales: 395 Brittany Farms Road, New Britain; 1317 East Street, New Britain; and 70 Kane Street, West Hartford. Based on these sales, Massenberg arrived at a market sales price of \$36,600 per unit, or a total price of \$7,612,800 ($\$36,600 \times 208$).

395 Brittany Farms Road is a 150 unit apartment complex that was built in 1987. This property was sold by Normandy Heights CHFA Inc., to Normandy Heights, LLC on July 8, 1998 for \$7,126,000, or \$47,507 per unit.

1317 East Street is a 151 unit apartment complex that was sold by CHFA to Sandy Beach, LLC on July 8, 1998 for \$5,026,000, or \$33,285 per unit.

Finally, 70 Kane Street is a 200 unit apartment complex that was sold by SKW2 Real Estate LP to Westwood Apartments & Condo Property Management on July 17, 1998, for \$6,683,000, or \$33,415 per unit.

Flanagan, under his sales approach, selected six sales in order to develop a fair market value estimation of the subject of \$42,500 per unit, or \$8,840,000. Of the six

sales selected, three were government regulated properties, and were therefore given additional weight by Flanagan as being similar to the subject.

The first of the government regulated properties is 15 Ridgeland Road, Wallingford, a 32 unit apartment complex built in 1951 and sold by the Housing Authority of Wallingford to Ridgeland Road LLC on November 3, 2003, for \$1,350,000, or \$42,188 per unit.

The second sale of a government regulated property selected by Flanagan is 395 Brittany Farms Road, New Britain, a sale also selected by Massenberg.

The last of the three government regulated properties is a six building, multi-story former carpet factory complex built in 1869-1923 and renovated to apartments in 1988-1990. This property was sold by CHFA to Northland Bigelow Commons, L.P. on June 21, 1999, for \$20,410,100, or \$43,334 per unit.

Considering that most of the sales relied upon by the two appraisers were sales of apartment complexes under governmental authority, it is difficult to attach much credibility to them for the following reasons: First, these sales for the most part were to limited liability purchasers. Second, the sales selected by both appraisers involved subsidized units with certain tax benefits. Third, property sold under governmental authority generally is property that has been reacquired because of the financial problems as recognized by Massenberg. See Hall Keen East Hartford Limited Partnership v. Town of East Hartford, Superior Court, judicial district of New Britain, Docket No. CV 02 0516421 (December 15, 2004, Aronson, J.T.R.) (38 Conn. L. Rptr. 234).

Because of the problems with the sales approach as stated above, and because neither appraiser has relied on the cost approach to value, the income approach appears to be the most credible process for the determination of value in this case.

In considering the income approach to value, Massenberg noted that "[i]n order to develop the income approach, it is necessary to establish the stabilized market rent for the subject property. The reconstructed operating statement used in the [i]ncome [a]pproach is based on the financial statement(s) [displayed in the Addendum] provided by the owner of the subject property." (Plaintiff's Exhibit 6, p. 40.)

The 2001 financial statement of the plaintiff, listed in the addendum of Massenberg's appraisal report, lists gross rents of \$1,875,645. (Plaintiff's Exhibit 6, Addendum.) This produces an actual rent of \$751 per unit, per month (\$1,875,645 divided by 12 months and divided again by 208 units). Yet, Massenberg developed a reconstructed operating statement for 2001 using a monthly market rent of \$775 per unit.

Flanagan, on the other hand, based his reconstructed operating statement for 2001 on the reported 1999 gross rent of \$1,726,680, or \$692 per unit, per month (\$1,726,680 divided by 12 months and divided again by 208 units).

Since the goal in this proceeding is to determine the value of the subject as of October 1, 2001, it seems more credible to use the rental income reported by the plaintiff for the year 2000, the last full year prior to the date of valuation, which amounts to \$703 per month, or \$1,753,800 per year. (Defendant's Exhibit B, p. 74.) Flanagan, in projecting revenue for the subject property, eliminated financial revenue but included

laundry/vending income. (Defendant's Exhibit B, p. 64.) Flanagan listed the laundry/vending income at \$24,441. (Defendant's Exhibit B, p. 74.) Although Massenberg made an independent determination of market rent, in accordance with General Statutes § 12-63b (a) (3), it is appropriate to use the actual rents produced by the subject in 2000. The reason for this finding is that the contract rent of the subject is comparable to the market rent when CHFA subsidized benefits are added in. See Hall Keen East Hartford Limited Partnership v. Town of East Hartford, supra, 38 Conn. L. Rptr. 236, 237.

Using the rental income as reported by Flanagan for the year of 2000, which reflects actual rents, at \$1,753,800, less a 5 percent allowance for vacancy and collection loss, plus the addition of laundry/vending income at \$24,441, the resulting effective gross income of \$1,690,551 is obtained.

A major difference between Massenberg and Flanagan in their development of the subject's operating expenses is that Massenberg included the payment of real estate taxes as part of the operating expenses, whereas Flanagan excluded the payment of real estate taxes from the operating expense statement, but included taxes as part of his capitalization rate. In this instance, Flanagan determined an effective tax rate of 2.442 percent by multiplying the town's mill rate of 34.89 by 70 percent. (Defendant's Exhibit B, p. 78.) Subtracting the real estate taxes from Massenberg's reconstructed operating

statement results in a total operating expense of \$676,659, as compared to Flanagan's operating expense statement of \$640,778 for the year 2000.¹

The operating expense statement developed by Flanagan was reconstructed from the income and expense statement provided to the Enfield assessor by the plaintiff. (See Defendant's Exhibit B, p. 75.) It is therefore appropriate to use the 2000 year operating expenses as listed by Flanagan at \$640,778. (See Defendant's Exhibit B, p. 75.) With an effective gross income of \$1,690,551 and an operating expense of \$640,778, the net operating income before taxes amounts to \$1,049,773.

A review of each appraiser's development of the capitalization rate, and the credibility attached to those determinations, leads to the conclusion that a capitalization rate of 13.5 percent is appropriate in this instance. See Hall Keen East Hartford Limited Partnership v. Town of East Hartford, supra, 38 Conn. L. Rptr. 237.

With a net operating income of \$1,049,773 and a capitalization rate of 13.5 percent, this court finds that the fair market value of the subject property as of October 1, 2001, is \$7,776,096. Since this court's determination of fair market value is less than the valuation of \$8,320,000 placed upon the subject property by the board of assessment

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Although it is not improper to list real estate taxes as a fixed expense in an operating expense statement, since it is the object of this appeal to determine the valuation of the subject to which the tax rate is applied, it seems more appropriate to exclude the real estate tax from the operating expense statement in favor of including taxes as a function of the capitalization rate. See *The Appraisal of Real Estate* (12th Ed. 2001) p. 513.

appeals, the plaintiff has sustained its burden to show that it has been aggrieved by the action of the town of Enfield.

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

Arnold W. Aronson
Judge Trial Referee