

NO. HHB CV 14-6024770 : SUPERIOR COURT
CORPRIDGE LAND : JUDICIAL DISTRICT OF
COMPANY, LLC : NEW BRITAIN
v. :
TOWN OF ROCKY HILL : JANUARY 22, 2016

MEMORANDUM OF DECISION

The plaintiff, Corpridge Land Company, LLC (Corpridge) brings this real estate tax appeal challenging the town of Rocky Hill assessor’s valuation of its six lots located in Corpridge Office Park for the grand list of October 1, 2013.

The subjects of this appeal, are six remaining vacant lots located at the Corpridge Office Park. The assessor for Rocky Hill valued the six lots, as of the revaluation date of October 1, 2013 as follows:

\$88,519/ac	255 Capital Blvd,	\$1,279,100	(14.45 acres)
\$64,783/ac	200 Capital Blvd,	\$1,431,700	(22.1 acres)
\$169,376/ac	150 Enterprise Dr.	\$1,112,800	(6.57 acres)
\$129,756/ac	250 Enterprise Dr.	\$1,170,400	(9.02 acres)
\$214,913/ac	110 Henkel Way	\$992,900	(4.62 acres)
\$184,634/ac	125 Henkel Way	\$1,083,800	(5.87 acres)
	Total	\$7,070,700	

The plaintiff's appraiser, John J. Leary (Leary) and the town's appraiser, Robert J. Mulready (Mulready) valued the six lots, as of October 1, 2013, as follows:

<u>Mulready</u>		<u>Leary</u>		
255 Capital Blvd	(14.45/ac)	\$710,000	\$48,966/ac	\$1,807,700
				\$124,669/ac
200 Capital Blvd	(22.1/ac)	\$1,080,000	\$48,869/ac	\$1,982,308
				\$89,697/ac
250 Enterprise Dr.	(9.02/ac)	\$440,000	\$48,780/ac	\$706,464
				\$78,322/ac
150 Enterprise Dr.	(6.57/ac)	\$320,000	\$48,706/ac	\$605,676
				\$92,188/ac
110 Henkel Way	(4.62/ac)	\$230,000	\$49,784/ac	\$528,396
				\$114,371/ac
125 Henkel Way	(5.87/ac)	\$290,000	\$49,404/ac	\$581,600
				\$99,080/ac
Total value of six lots		\$3,070,000		
				\$6,212,144 ¹

Corpridge Office Park, located in proximity to Interstate 91(I-91) and West Street interchange (Exit 23 off I-91), was initially developed in 1988 consisting of 15 parcels totaling 210.50 acres. Nine of the original 15 lots were developed into office/industrial use and a 139,000 sq. ft hotel in the period of 1988 and 1989. See Plaintiff's Exhibit 7, p. 2. Of the original 210.50 acres in the Corpridge Park, 62.63 acres remain consisting

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Mulready's final reconciliation was adjusted for easements on the subject lots and applied \$10,000 per acre for wetlands and uplands to go with the net land as adjusted. Defendant's Exhibit 7, p. 61.

of the remaining six lots. As noted by Mulready, all of the six lots are serviced by municipal water, sanitary sewers, natural gas, electricity, and cable. Defendant's Exhibit D, p.20. As the addresses of the six lots indicate, the lots are not contiguous, but rather separate building lots.

The prior development of the Corpridge Office Park was recited by Leary in Plaintiff's Exhibit 7, p. A-2 as follows:

"The property has constantly been marketed during its lifetime, and the gaps in development roughly correspond to the effects of periodic economic recessions, including the most recent Great Recession from 2008 - 2010. Nine lots including the six remaining lots that are the subject of this appraisal were acquired by a predecessor entity to the current owner in July 2000 for the equivalent of \$21,355 per acre. The ownership group spun off the parcel at 400 Capital Boulevard in 2001 and developed a speculative office building completed in 2002, and the building sat vacant for multiple years before eventual lease-up and sale as an investment property in April 2007. The parcel at 333 Capital Boulevard (6.60 acres) sold in September 2005 for \$100,000 per acre, and the assemblage of 644 West Street (3.70 acres) sold in May 2013 for \$99,446 per acre indicating that land prices in the development remained flat but have returned to pre-Great Recession levels."

The subject six lots are located in an Office Park District (OP) zone. These six lots were designed primarily to serve as a large scale office and light industrial use permitting structures of 15,000 sq. ft. or larger subject to site plan approval. A special permit is needed to develop the sites for hotels, motels, utilities, public buildings, public and private schools, places of worship and assisted living facilities. Apartment complexes are permitted as a mixed use of the site, but require a special permit. The OP district requires lots to have a minimum of three acres. All of the six lots meet this acreage requirement.

One particular problem with the location of the Corporate Ridge Office Park is its proximity to the I - 91/West Street interchange (Exit 23 off I - 91). As noted by Leary, "the Corporate Ridge Office Park has been subject to Connecticut State Traffic Commission ("STC") approval since its inception. Each parcel developed must obtain STC review and approval in the context of potential off-site improvements to the interchange. No current specific limit on the total amount of developed space permitted prior to interchange improvements is in place, although the original approvals in 1986-87 reflected a limit of 1,300,000 sq. ft. that was rescinded in October 1991 in favor of parcel-

by-parcel review and approval.” Plaintiff’s Exhibit 7, p. 2 of 4.²

As to the subject’s highest and best use, Leary concluded that “Corporate Ridge Office Park remains for office and/or office-industrial development over the next 10 to 15 years, reflecting the limited demand factors in the market.” Plaintiff’s Exhibit 7, p. A-19. Of particular importance is Leary’s comment that “(t)he primary constraint is the lack of market demand for speculative office development that is not likely to improve in the foreseeable future. As of the effective date of appraisal and for the past 10 years or so, the only demand factor for the subject parcels in the market stems from owner-occupied users.”

Mulready’s conclusion, as to the subject’s highest and best use as vacant, is for office park development; that is, those uses permitted by the OP zoning regulations which he contends allows for apartments, offices, industrial - office complexes and medical offices. See Defendant’s Exhibit D, p. 32.

The main difference between Leary’s highest and best use and Mulready’s highest and best use is that Leary excludes the use of any of the six lots for apartment use whereas Mulready includes apartment use.

As noted in *United Technologies Corp. v. East Windsor*, 262 Conn. 11, 25-26, 807 A.2d 955 (2002), “(t)he highest and best use determination is inextricably intertwined with the marketplace because ‘fair market value’ is defined as the price that a willing buyer would pay a willing seller based on the highest and best possible use of the land assuming, of course, that a market exists for such optimum use. . . . The highest and best use conclusion necessarily affects the rest of the valuation process because, as the major factor in determining the scope of the market for the property, it dictates which methods of valuation are applicable. . . .” (Internal quotation marks and citations omitted.)

In the present case, both Leary and Mulready acknowledged that the market for the subject lots, as of October 1, 2013, was and still is almost non-existent. For this

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As noted by Leary, he “conducted this appraisal under the Extraordinary Assumption that the six remaining lots can be developed to their full potential without the STC requiring significant off-site improvements to the I-91/West street interchange. The term *Extraordinary Assumption* is defined in USPAP as: **An assumption directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter an appraiser’s opinions or conclusions.**”

reason, both appraisers resorted to similar theories of valuation. Leary used a subdivision analysis, which he noted combines all three approaches to value, market sales, cost and income capitalization. As Leary noted, “(t)he sales comparison approach is used to arrive at the current retail value for the lots. The cost approach is used to deduct any development costs associated with producing the lots. The income capitalization approach is used to discount the net sale proceeds over the absorption period to an indication of present value. The six remaining lots at Corporate Ridge Office Park front on improved roads, so no deduction for development costs is required. . . .” Plaintiff’s Exhibit 7, p. A-20. The use of the cost approach to value vacant lots is somewhat problematical since, by definition, the “cost approach value is estimated as the current cost of reproducing or replacing the improvements . . . minus the loss in value from depreciation plus land or site value.” *The Appraisal of Real Estate* (12th Ed. 2001) p. 50. As generally recognized, land does not depreciate and the cost of reproducing or replacing is related to improvements to land not the land itself.

Of particular note is the recognition by both Leary and Mulready that since there exists no market for the sale of the subject lots, it would be extremely difficult to determine market value. “A market exists when there are sufficient sales in the market similar in nature to the subject which can truly be called comparable. . . .” See *Hall Keen East Hartford Limited Partnership v. East Hartford*, 38 Conn. L. Repr p.4 (2004) citing *Aetna Life Ins. Co. v. Middletown*, 77 Conn. App. 21, 35, 822 A.2d 330, cert denied, 265 Conn. 901, 829 A.2d 419 (2003); *The Appraisal of Real Estate*, (12th Ed. 2001) p. 63.

Although Mulready noted that “we suffered through a serious recession there was still demand for good developments” Defendant’s Exhibit D, p. 60. However, Mulready also predicted that only 2 of the 6 subject lots would be sold every three years. Defendant’s Exhibit D. p. 60. Currently, since October 1, 2013, no sales have occurred for any of the six lots.

Mulready’s optimistic outlook about the development and sale of the subject lots comes from his view that medical developments in the town of Farmington and in the town of Glastonbury show a strong market for medical office buildings. In addition, Mulready points to the “baby boomers” who, as they grow older, will support health related services as well as provide a demand for more apartment living. See Defendant’s Exhibit D, pp. 58-60.

The problem with Mulready’s optimistic outlook is that the University of Connecticut Health Center located in Farmington is a big draw for satellite medical facilities in that area which is not present in Rocky Hill. However, Mulready’s reference to apartment development in the town of Simsbury, caused in part by the aging “baby

boomers” in the country, finds some support for apartment development in the office park with the prior construction of a 144-unit Alterra Rocky Hill apartment complex in 2012 located at 791 Brook Street in the Corpridge Office Park.

Leary examined seven sales of business park lots between January 2010 and December 2013. The lots ranged in size between 2.5 acres and 30 acres and were located along the I- 91 highway corridor. Three of the seven sales were located in the town of Wallingford; one in the town of Bloomfield; one in the town of Windsor; and one in the town of Windsor Locks. The seven lot sales ranged in price from \$41,702 to \$100,000 per acre. Leary opined that the retail price range for the 7 lots, as of October 1, 2013, was between \$95,000 to \$105,000 per acre which would result in an average price per acre of \$100,000. See Plaintiff’s Exhibit 7, p. A-21. However, Leary also noted, in that same exhibit and page, that “(t)he seven business park lot sales display a range of \$41,702 to \$100,000 per acre with the following central tendencies: a median price of \$66,989 per acre; an average price of \$69,386 per acre; and a weighted average price (total sale prices divided by total acreage) of \$60,776 per acre.”

Recognizing that there was a limited market for the subject six lots, Leary turned to the subdivision analysis technique which he used to determine the present value of the six lots. This technique would reflect a 10-year sell-out period and a 15-year sell-out period. As Leary noted: “This simulates the range of marketability as of the effective date of appraisal.” Plaintiff’s Exhibit 7, p. A-20. Using the 10-year absorption rate, Leary was of the opinion that the present value range of the lots was between \$51,300 to \$51,900 per acre. Using the 15-year absorption rate, Leary found that a present value range of the lots was between \$45,200 to \$46,000 per acre. Leary concluded that the average present value of the six lots was \$49,000 per acre, resulting in a total value for the six lots of \$3,070,000.

Leary, using cash flow projections under the subdivision analysis technique, noted that “the cash flow projections are conducted under the Extraordinary Assumption that the six remaining lots can be developed to their full potential without the State Traffic Commission requiring significant off-site improvements to the I-91/West Street interchange.” Plaintiff’s Exhibit 7, p. A-22. Leary’s use of the income approach to value the subject lots, similar to Leary’s use of the cost approach, is also problematical since by definition the income approach involves the capitalization of the property’s earning power. *The Appraisal of Real Estate* (12th Ed. 2001), p. 50. Leary’s earning power for the six lots does not come from each of the lots actually producing income, but rather, from the disposal of the lots as an asset.

Mulready considered eight sales as part of his valuation process. Sales one

through four are vacant land purchased for medical offices (clinics). Sales five through eight are sales of vacant land purchased for apartments. Defendant's Exhibit D. p. 35. Using the sales comparison approach with the eight land sales, Mulready, after making adjustments³, arrived at a valuation of the lots between \$196,637 and \$339,365 per acre. Taking the average value after adjustments, Mulready concluded that the average price per acre was \$278,760 rounded to \$280,000 per acre. See Defendant's Exhibit D, p. 57. Mulready had reduced the number of usable acreage to 47.01 acres (Defendant's Exhibit D, p. 22) upon which he based his valuation of the subject.

Although both appraisers considered present comparable sales in Wallingford, Glastonbury, New Britain, Westbrook, North Haven, Simsbury, Windsor Locks, Windsor and Bloomfield, the most credible of the comparables was the sale reported by Mulready at 791 Brook Street in Rocky Hill. The sale of the 791 Brook Street lot in the subject office park, containing 9.81 acres of vacant land, was sold, according to Mulready, for \$3,456,000 or \$352,294 per acre on September 20, 2012. As Mulready notes: "The site was approved for development before the time of sale. The grantor had to get a zone change with the Town of Rocky Hill before the site received an approval for an apartment development. The site was approved for 144 apartment units. . . ." Defendant's Exhibit D, p. 45. Leary, on the other hand, noted the sale of 791 Brook Street but valued this sale at \$3,456,000 which he equated to a sale price of \$24,000 per dwelling unit rather than on a per acre basis as used by Mulready. Plaintiff's Exhibit 7, p. A-21.⁴ Leary also selected the sale at 644 West Street in Rocky Hill, an assemblage of 3.70 acres in the office park development. This property sold for \$367,950 or \$99,446 per acre in May 2013.

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The adjustments made by Mulready are shown on Defendant's Exhibit D. pp. 54-55 consisting of adjustments for location, physical characteristics, economic characteristics, and approvals in place at the time of sale. "All of the sales had approvals in place at the time of sale, all of the sales receive a downwards adjustment of -10% for approvals in place. As of 10/1/13 it wouldn't be prudent for an investor/developer to purchase a piece of land without approvals in place for either an owner occupied building or an investment property."

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Leary noted that he was "well aware of the sale of 9.81 acres in the OP District at 791 Brook street in September 2012 for what is now the 144-unit Alterra Rocky Hill apartment complex that was the subject of the Town Attorney opinion letter referenced under Zoning on Page A-8. The \$3,456,000 sale price equated to \$24,000 per dwelling unit, the relevant unit of comparison, with approvals in place."

The problem with Mulready's selection of comparables, except for the Brook Street sale, is that he concentrated on the sales of commercial property involving the sale of vacant lots for the purpose of constructing medical office buildings. These selections are related to Mulready's concept that since vacant lots near the University of Connecticut Health Center facilities lead to the sale of nearby lots for uses such as medical clinics, vacant lots in the subject OP would similarly benefit. Considering Mulready's use of medical office buildings, Leary notes, there is a limited demand for such uses in Rocky Hill.

Mulready also considered as comparables the sale of vacant lots purchased for the construction of apartments. These sales reflect on Mulready's consideration that the aging of baby boomers encourage the construction of apartments for their use.

There are significant differences in valuing vacant land for the construction of apartments and the sale of vacant land for commercial uses. As Leary noted, a purchaser of one of the six lots, presently, would most likely consider buying for their own use rather than for investment purposes. However, a purchaser of one of the six lots, looking to construct an apartment complex such as 791 Brook Street, which may require zoning approval, would most likely be an investor looking for income producing property. See Plaintiff's Exhibit 7, p. A-21. Mulready points out that in the development of the lots at 255 Capital Blvd and 200 Capital Blvd material containing bedrock consisting of igneous basalt could be a factor in the value of these two lots. Mulready contends that builders bringing basalt to the site for construction cost approximately \$25 per ton versus utilizing the native basalt rock at \$15 per ton. Estimating the need for approximately 30,000 tons of igneous basalt at a saving of \$10 per ton would be a benefit of \$300,000. See Defendant's Exhibit D, p. 20. However, at this stage of the valuation process, this benefit appears to be speculative at best.

Given the input from both Leary and Mulready, the highest and best use of the subject six lots appears to be that of a purchaser, as of October 1, 2013, seeking to acquire each of the six lots with an expectation of owning the lots over a lengthy period of time, paying taxes and costs of maintenance and with a marketing plan based upon an expectation that the economy will improve in the future.

Recognizing that there is a very limited demand for the present purchase of the subject lots as shown by the sale of 333 Capital Blvd, a 6.60 acre lot in the office park for \$100,000 in 2005, and the subsequent sale of 644 West Street, a 3.70 acre parcel in the office park for \$99,446 in 2013. Two sales in an eight year period supports both Leary's and Mulready's recognition of the dormant market for commercial lots in this location. Mulready's final value of \$136,000 per acre for net land (adjusted for wetlands and

uplands) [Defendant's Exhibit D, p. 64)] and Leary's final valuation of \$49,000 per acre [Plaintiff's Exhibit 7, p. A-25] points out the substantial difference between two experienced appraisers. Under these circumstances, the value of each of the six lots as of October 1, 2013 lies somewhere between \$49,000 and \$136,000 per acre.

With no present market for the sale of the subject lots, it makes sense to accept the appraisers' concept that the valuation of the lots lies in their sale over a period of time. However, from the standpoint of the town, the tax assessment cannot be spread out over time but rather is based on a yearly valuation as of the last revaluation year. See Connecticut General Statutes § 12-55.⁵

Leary's appraisal treats the six lots as being under one ownership to be disposed of piecemeal as part of a going-concern enterprise in which the sale of individual lots contributes to overall value of the enterprise. See Guide to Property Tax Valuation by Robert F. Reilly and Robert P. Schweih's (2008), p. 11. A going concern enterprise is generally related to an established operating business, which of course, the subject six lots are not. See The Appraisal of Real Estate (12th Ed. 2001) p. 27. Even though Leary's method of disposal of lots over a period of time may result in an overall value of the enterprise, still, the goal, for tax assessment purposes, remains the value of the individual six lots as of October 1, 2013.

The assessor's valuation, as of October 1, 2013, for a total of \$7,070,700, amounts to a per acre value of \$112,896. This per acre valuation of the assessor at \$112,896 being higher than Mulready's valuation of \$99,187 per acre (\$6,212,144 divided by 62.63 acres) results in a finding that the plaintiff has proven aggrievement by the assessor's 2013 assessment.

The following activities do indicate that a limited market for the subject lots does exist. The sale of 375 Capital Boulevard in 2005 for approximately \$100,000 per acre; the sale 644 West St. Assemblage in Rocky Hill that included a portion of Corporate Ridge, composed of 2.61 acres that sold for \$95,000 per acre and the 1.09 acres acquired from New Boston West, LLC for \$110,092 per acre; the 125 Henkel Way that went to contract in 2010 for \$760,000 or \$120,000 per acre which contract was never finalized and 110 Henkel Way that went to contract for \$500,000 or \$100,000 per acre but never

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General Statutes § 12-55(a) recites, in pertinent part: "On or before the thirty-first day of January of each year . . . the assessors or board of assessors shall publish the grand list for their respective towns"

closed leads the court to conclude that the value of the individual parcels on October 1, 2013 was \$95,000 per acre.

Taking the collective acreage of the six parcels at a total of 62.63 acres, the total value of the subject six lots, as of October 1, 2013, based on the foregoing analysis, amounts to a value of \$95,000 per acre or a total value of \$5,949,850. Based on this finding, the fair market valuation of the six lots breaks down as follows:

255 Capital Boulevard (14.45 ac)	\$1,372,750
200 Capital Boulevard (22.1 ac)	\$2,099,500
250 Enterprise Drive (9.02 ac)	\$ 856,900
150 Enterprise Drive (6.57 ac)	\$ 624,150
125 Henkel Way (5.87 ac)	\$ 557,650
110 Henkel Way (<u>4.62 ac</u>)	<u>\$ 438,900</u>
Total (62.63 ac)	\$5,949,850

Accordingly, judgment may enter in favor of the plaintiff without cost to either party.

Arnold W. Aronson

Trial Referee

Judge