

NO. CV 06 4011423S

: SUPERIOR COURT

BURLINGTON COAT REALTY OF
EAST WINDSOR, INC.

: JUDICIAL DISTRICT OF
: NEW BRITAIN
:

v.

TOWN OF EAST WINDSOR

: JANUARY 3, 2008

MEMORANDUM OF DECISION

This is a real estate tax appeal brought by the plaintiff, Burlington Coat Realty of East Windsor, Inc. challenging the valuation of its property located in the town of East Windsor (town) by the town's assessor on the Grand Lists of October 1, 2005 and October 1, 2006.

The total acreage of the subject property is 10.10 acres with 5.59 acres located in East Windsor and 4.51 acres located in the town of Enfield. Only the valuation of the plaintiff's property in East Windsor is at issue in this appeal.

The subject property is located at 10 Prospect Terrace on the west side of Prospect Hill Road and King Street (U.S. Route 5) and on the easterly side of Interstate I-91. Prospect Terrace is a two-lane asphalt paved roadway with streetlights, storm drains and sanitary sewers running on a decline from Route 5 to the building and parking areas of the

subject. An interchange with ramps to and from I-91 is located approximately one-half mile away from the subject.

The subject site is improved with a single-story, free-standing retail building containing 71,971 square feet of gross building area and a mezzanine containing about 15,220 square feet. The building was constructed in 1987 with masonry block exterior and with a flat built-up roof. 51,540 square feet of the building is located in East Windsor and 20,431 square feet is located in Enfield. The property's topography slopes naturally downward from Prospect Hill Road to the easterly side of I-91. Adequate parking is provided by multiple-tiered lots. The building is currently occupied by a Burlington Coat Factory retail store and a subsidiary, the Baby Depot.

On the last revaluation year of October 1, 2002, the assessor valued the East Windsor portion of the subject property at \$3,917,000. The plaintiff's appraiser, Charles A. Liberti (Liberti) was of the opinion that the fair market value of the subject was \$3,311,000 with that portion of the subject located in East Windsor, as of October 1, 2002, valued at \$2,371,000. The town's appraiser, Christopher Kerin (Kerin) was of the opinion that the fair market value of the subject property, as of October 1, 2002, was \$5,715,000, with the East Windsor portion, as of October 1, 2002, valued at \$4,100,000.

In determining the value of the subject property as a whole, Liberti considered only the sales comparison approach. Liberti did not consider the income approach to value because, in his opinion, the property was owner/occupied, and therefore, not income-

producing property. Liberti also did not use the cost approach because of the building's age.

Liberti determined that the subject's present use as retail was its highest and best use. See plaintiff's Exhibit 1, p. 23. In considering the highest and best use of the subject, Liberti selected four sales that he considered comparable to the subject:

State Line Plaza	130 Elm Street, Enfield
Enfield Commons	25 Hazard Avenue, Enfield
office/health building	3 Weymouth Road, Enfield
former Railroad Salvage	191 South Main Street, East Windsor

See plaintiff's Exhibit 1, pp. 26-29.

In considering the highest and best use of the subject, Liberti was of the opinion that the subject was not located in a top retail area. On the contrary, Kerin pointed out that the subject is located a half-mile from an I-91 interchange as well as an area along U.S. Route 5 containing Walmart, Big Y supermarket, Showcase Cinemas, a hotel site, restaurant, furniture showroom, bank, banquet hall, retail strip center and office buildings. See defendant's Exhibit A, p. 9. Contrary to Liberti's conclusion, the court finds that the subject's location is in a prime retail area.

Of the four sales selected by Liberti, the office/health building sale and the former Railroad Salvage sale do not meet the criteria of the highest and best use of the subject as retail. As an example, Liberti listed the condition of the Railroad Salvage property, built in 1965, as being in below average condition and vacant at the time of inspection with a present use for car auctioning. Sale three, the office/health building, has its current use as

a medical center, fitness center and rehabilitation center for Johnson Memorial Hospital, which certainly is not a retail use.

Liberti's sales one and two are retail sales of multiple tenant shopping centers. Sale one is a retail shopping center located on 19.36 acres improved with retail shops containing 155,000 square feet of gross building area. Tenants in this sale include Home Depot, TGIF and Costco. Sale one sold for a reported price of \$7,359,000, or \$47.48 per square foot, on November 20, 2002.

Sale two is a retail shopping center located on 32.27 acres of land improved with retail shops containing 259,972 square feet of gross building area. Tenants in this sale include Old Navy, Olive Garden, Office Depot, Barnes & Noble and Bob's Stores. Sale two sold for \$17,848,000, or \$68.65 per square foot, on November 20, 2002.

Liberti reported that these two sales were part of a multiple package sale, but did not investigate the significance of the bulk sale as it related to setting the values of sales one and two.

Kerin was of the opinion that the highest and best use of the subject, as improved, was for retail use as a big box retailer. Kerin considered the sales comparison approach and the income approach to value. Kerin, as did Liberti, considered that the cost approach was inapplicable to the subject building as it was too old. In using the sales approach, Kerin selected three sales.¹ Kerin's sale at 1095 Kennedy Road, Windsor, was a retail

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Kerin reported only three sales as comparable to the subject: sale one (51-71 Palomba Drive, Enfield), sale two (3 Weymouth Road, Enfield) and the 1095 Kennedy Road, Windsor sale

shopping center located on 11.65 acres just off I-91. This property, consisting of two buildings with a total of 75,813 square feet of gross building area, contains a Stop & Shop as an anchor tenant, Blockbuster Video, Radio Shack and a liquor store. The property sold on March 17, 2003 for \$14,605,000 or \$192.65 per square foot of gross building area.

Sale two, located at 3 Weymouth Road, Enfield, is the same medical/rehabilitation property Liberti selected. Although Kerin and Liberti selected this March 7, 2003 sale for \$2,400,000, or \$51.85 per square foot of gross building area, each adjusted the sale differently. Kerin adjusted this sale up from \$51.85 to \$71.87, whereas Liberti adjusted the sale down from \$51.85 to \$50.81 per square foot of gross building area.

Sale one, located at 51-71 Palomba Drive, Enfield, is a retail shopping center containing 25 acres of land. This property contains three free-standing buildings, constructed in 1998, with a total square footage of 120,527 of gross building area. Tenants in this property include Big Y, Rite-Aid, Hollywood Video and a bank. This property sold for \$12,950,000, or \$107.44 per square foot on February 7, 2000. Kerin reported that this sale was financed with a six-year loan for \$11,400,000 at 8.58% interest. See defendant's Exhibit A, p. 21. Kerin gave no explanation why there was such a short-term loan for such a large amount. Kerin adjusted this sale price from \$107.44 down to \$84.61 per square foot.

which is apparently referenced in error as both sale three and sale four when Kerin only had a total of three sales.

In rebuttal to Liberti's use of the 130 Elm Street, Enfield sale and the 25 Hazard Avenue, Enfield sale as good comparables, Kerin, in checking on the background of a sale unrelated to the subject, was informed that these two sales were part of a bulk sale, as he describes it, referring to the sale of 36 similar-type properties from one owner to one buyer. The implication of this is that the reported sales one and two that Liberti used were not arms-length transactions which are necessary to qualify the sales as fair market sales.² Kerin had no information as to whether the values placed on the 36 properties that included Liberti's sales one and two were based on fair market value or based on an arbitrary allocation of value by the parties to the transaction. Although one may have suspicions about the sale prices attributed to Liberti's sales one and two, there is insufficient information to completely discount the sale prices attached to these two sales.

Using the assessor's valuation of the subject in East Windsor at \$3,917,000, divided by the East Windsor portion of the building at 51,540 square feet, results in a price of \$76 per square foot of gross building area. The assessor's square foot value of \$76 lies between Kerin's square foot value of \$80 and Liberti's square foot value of \$46.

In support of his valuation using the sales comparison approach, Kerin also considered the income approach. In doing so, Kerin reviewed multi-tenant shopping

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See General Statutes § 12-63 (a), which provides, in relevant part, as follows: "The present true and actual value of all other property shall be deemed by all assessors and boards of assessment appeals to be the fair market value thereof"

centers and big box³ leases to arrive at a rental rate for the subject property of \$8.50 per square foot triple net. See defendant's Exhibit A, p. 33. Given Kerin's determination that the subject had 71,879 square feet of gross building area, he computed the potential gross rental income at \$610,971.50. Kerin then took a vacancy loss at 10% to arrive at an effective gross income of 549,874.35. Taking 7% of the effective gross income, Kerin concluded that the total expense would be \$38,491,20 resulting in a net operating income of \$511,383.15. Kerin then considered a capitalization rate of 9% to arrive at a value of \$5,680,000. Kerin's use of the income approach, in this case, disregards the fact that the subject building, as an owner/occupied big box, was a special purpose building, not the multi-tenanted shopping centers he used to determine market rental value.⁴

Kerin notes in his conclusion of value of the subject that "[t]he subject property as improved was compared to three sales of improved retail properties 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. Sale [two] is inferior to the subject in terms of its location and physical construction, and sets a lower

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A "big box" was referred to in a property tax appeal involving a lease of a 171,245 square foot building to K-Mart as a special purpose building. See Hull v. Spartanburg County Assessor, 372 S.C. 420, 422, 641 S.E.2d 909 (2007).

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"A special purpose property is defined as real estate appropriate for only one use or a limited number of uses, whose highest and best use is probably a continuation of its present use. A limited use property or special purpose property has relatively few potential buyers or has a limited demonstrable market." (Citations omitted.) Sun Valley Camping Cooperative, Inc. v. Stafford, 94 Conn. App. 696, 713, 894 A.2d 349 (2006).

limit of value. Sale [three] is a newer retail center in a superior location, setting an upper limit of value. Comparable sales [one and two] are most comparable to the subject and were given more consideration in the reconciliation of the sales comparison approach.” (Defendant’s Exhibit A, p. 30.)

Eliminating both the office/health property sale at 3 Weymouth Road, Enfield selected by both Kerin and Liberti and the former Railroad Salvage property at 191 South Main Street, East Windsor selected by Liberti, as inadequate to be considered as comparable to the subject, the court is left with two shopping centers selected by Kerin at 51-71 Palomba Drive, Enfield and 1095 Kennedy Road, Windsor and Liberti’s reported sales of two shopping centers at 130 Elm Street, Enfield and 25 Hazard Avenue, Enfield. Although the shopping center sales with a tenant mix are different from an owner/occupant sale, apparently both appraisers feel confident that there is enough of a similarity from which to base an opinion of value of the subject property. Recognizing the diversity of shopping center sales selected by each appraiser, which, in a sense, reflects beneficially on their clients, it is appropriate to take these four sales in order to give the court a good spread of value from which to determine the fair market value of the subject.

Taking the adjusted sale price of the remaining four sales that total \$309.40⁵ and dividing by four, results in an average of \$77.35 per square foot of gross building area.

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The adjusted sale prices for Liberti’s comparable sales at 130 Elm Street, Enfield and 25 Hazard Avenue, Enfield are \$41.78 and \$59.04, respectively. The adjusted sale prices for Liberti’s comparable sales at 51-71 Palomba Drive, Enfield and 1095 Kennedy Road, Windsor are \$84.61 and \$123.97, respectively.

This amount compares favorably with the assessor's valuation of the subject property at \$76 per square foot.

A basic principle to consider when dealing with a municipal property tax appeal is that it is the taxpayer's burden to prove aggrievement because the assessor had overvalued its property for tax purposes. See United Technologies Corp. v. East Windsor, 262 Conn. 11, 22-23, 807 A.2d 955 (2002). The simple fact in this case is that the plaintiff has failed to show that the assessor's valuation of the subject property as of the revaluation year of October 1, 2002, was excessive, and therefore, the plaintiff is not an aggrieved party for purposes of this appeal.

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

Arnold W. Aronson
Judge Trial Referee