

NO. CV 11 5015392S : SUPERIOR COURT
CT DEPARTMENT OF : JUDICIAL DISTRICT OF
TRANSPORTATION :
v. : NEW BRITAIN
CHERIHA, LLC, et al. : AUGUST 7, 2013

MEMORANDUM OF DECISION

On July 14, 2011, the commissioner (commissioner) of the department of transportation (DOT) filed with the clerk of the Superior Court a Notice of Condemnation and Assessment of Damages for the subject property located at 246 Beaver Street in the city of New Britain (city) in order to improve the street. At the time of its taking, the commissioner assessed damages in the amount of \$125,000, which was deemed the appraised value for the property of the owner Cheriha, LLC (Cheriha).

Cheriha filed an application with the court for reassessment of damages pursuant to General Statutes § 13a-76.¹ As the subject's owner, Cheriha claims that it is aggrieved by the commissioner's assessed value because the amount was inadequate. Therefore, it

¹ General Statutes § 13a-76 provides, in relevant part, as follows: "Any person claiming to be aggrieved by the assessment of such special damages or such special benefits by the commissioner may . . . apply to the superior court for the judicial district within which such land is situated for reassessment of such damages or such benefits so far as the same affect such applicant."

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seeks a reassessment of damages, interest, costs and attorney's fees.

This is an eminent domain action in which the only issue is the value of just compensation for the property taken, which in this instance means the fair market value (FMV) as of the date of taking. See Minicucci v. Commissioner of Transportation, 211 Conn. 382, 384, 559 A.2d 216 (1989). "The owner of land taken by condemnation is entitled to be paid just compensation. Conn. Const., art. I, § 11. [T]he amount that constitutes just compensation is the market value of the condemned property when put to its highest and best use at the time of the taking." (Citation omitted; internal quotation marks omitted.) Branford v. Santa Barbara, 294 Conn. 785, 795, 988 A.2d 209 (2010).

The subject's owner Cheriha engaged two appraisers: Jeff Arotsky (Arotsky) and Christopher Kerin (Kerin).

Arotsky described the subject property as follows:

"The property being appraised consists of an irregular shaped parcel of land having a total area of approximately 0.44 acres. The site is zoned B3, Secondary Business District. Location is in central New Britain at the intersection of Beaver and Washington Streets. Improvements include a 1-story brick veneer, concrete block and wood frame building having an area of 2,032 square feet [(SF)]. The building consists of commercial garage/automobile service space with supporting office/sales area. [It] is occupied by CARS R US Used Cars Sales & Service. Additional improvements include

approximately 14,700 [SF] macadam and concrete paving to include adequate parking, automobile storage and sales area, concrete walkways, curbing, and average quality landscaping. Public record indicates that the building was constructed in 1961, has been remodeled and updated to include a recently installed HVAC system and a new roof. Improvements have been maintained as called for and are in overall average condition.”

(Defendant’s Exhibit E, p. 1.)

Arotzky valued the subject property as of the date of taking at \$340,000. See defendant’s Exhibit E, p. 2.

Kerin valued the subject property as of the date of taking at \$320,000. See defendant’s Exhibit A.

The commissioner’s appraiser, John Lo Monte (Lo Monte) valued the subject property as of the date of taking at \$125,000. See plaintiff’s Exhibit 1.

It is interesting to note that the city’s assessor determined that the FMV of the subject property, as of the revaluation date of October 1, 2010, was \$149,900. See defendant’s Exhibit A, p. 46. This was approximately \$25,000 higher than Lo Monte’s valuation.

Although Kerin’s highest and best use was expansive when considering retail use for the subject property, he noted that the subject was a three-bay auto repair garage at the time of taking and narrowed his highest and best use to automotive-related purposes. See

defendant's Exhibit A, p. 21. In particular, Kerin noted: "The subject property as improved was compared to four sales of improved 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 #1 is given most consideration. It is a similar size property with similar physical characteristics requiring minimal adjustments." (Defendant's Exhibit A, p. 35.)

The commissioner's appraiser, Lo Monte, in defining the highest and best use for the subject noted, "since the building is proposed to be razed after the taking and considering the purpose of this report, it's your appraisers' opinion that the highest and best use for the subject property 'as improved' and 'as is' is its continued use as a commercial automotive garage and used car sales lot property for its remaining economic life." (Plaintiff's Exhibit 1, p. 37.)

All three appraisers considered the highest and best use of the subject property on the date of taking as an automotive service garage and used car sales lot.

All three appraisers considered the market sales approach. However, Arotsky and Lo Monte also used the income capitalization approach to value the subject in order to arrive at their indication of the subject's FMV as of the date of taking.

Of the four comparable sales Kerin selected, he considered sale one to be most representative of the subject property. Sale one is a three-bay auto repair garage located

at 1204 Stanley Street in New Britain. It sold on September 29, 2010 for \$337,000 (or \$167.16/SF of GBA). Located in a B-3 zone, this sale is a 1-story masonry building containing 2,016 SF. Following the date of sale, the new owner converted the building into a convenience store with fuel sales. The site contains 0.39 acres and is rectangular in shape with 145 feet of frontage on Stanley Street and 115 feet of frontage on Long Street. See defendant's Exhibit A, pp. 25-26.

All of the attributes of sale one mirror the subject property. As Kerin noted, this sale is very similar to the subject, and therefore, it is his best comparable. See defendant's Exhibit A, p. 35.

However, as the commissioner points out, the buyer for sale one obtained a \$350,000 loan from the seller which matures on April 30, 2015. See defendant's Exhibit A, p. 26. The purpose of the loan, in excess of the purchase price, is that the excess money was used to convert the building into a convenience store with new fuel dispensers. Because of this fact, Kerin gave a negative adjustment of 5% for financing. See defendant's Exhibit A, p. 33.

Kerin's remaining three sales are:

812 Stanley Street, New Britain

This property was sold on November 30, 2011 for \$200,000 (or \$111.11/SF). It is an auto service garage containing 1,800 SF of GBA. The site contains 0.23 acres

improved with a one-story, four-bay masonry block garage. See defendant's Exhibit A, pp. 27-28.

1186 Stanley Street, New Britain

This property sold on February 17, 2010 for \$175,000 (or \$122.72/SF). The site spans 0.18 acres with a one-story masonry block building containing 1,426 SF of GBA.

This property was a former two-bay auto service garage that was converted to a retail use – first as a convenience store and then as a liquor store. The property was operating as a liquor store on the sale date. See defendant's Exhibit A, pp. 29-30.

234 Newington Avenue, New Britain

This property sold on December 29, 2010 for \$500,000 (or \$247.52/SF). The site contains 0.30 acres improved with a one-story masonry building containing 2,020 SF which includes 520 SF of finished lower level space. There is also a drive-through lane present. This property was a Dunkin' Donuts store purchased by a franchisee. See defendant's Exhibit A, pp. 31-32.

In considering his four comparable sales, Kerin developed a chart showing the range of adjusted price per building area calculations. The range had a maximum of \$185.64/SF, a mean of \$153.05/SF and a minimum of \$128.86/SF. Kerin arrived at an indicated value for the subject of \$158/SF. Kerin determined that the FMV of the subject was \$321,056 ($\$158/\text{SF} \times 2,032/\text{SF}$ of GBA), rounded to \$320,000. See defendant's

Exhibit A, p. 35.

In using the market sales approach, Arotsky selected four sales, none of which were located in New Britain. Sale one was located at 1024 Blue Hills Avenue in Bloomfield. Sale two was located at 480 Main Street in East Hartford. Sale three was located at 331 Main Street in Manchester. Sale four was located at 135 New Park Avenue in Hartford.

Given the number of comparable sales that Kerin and Lo Monte selected in New Britain, an analysis of Arotsky's selection of sales outside of New Britain would be unproductive.²

Using the income capitalization approach, Arotsky found the FMV of the subject property as of the date of taking to be \$340,000. See defendant's Exhibit E, p. 60. Using the direct capitalization (DC) method, Arotsky estimated the value of real estate by converting a single year's net income expectancy and capitalizing this amount in a single step. See defendant's Exhibit E, p. 53.

Arotsky arrived at an effective annual gross income of \$42,000³ relying on rentals

² In addition to the remote locations of Arotsky's comparables, of particular note is Arotsky's large adjustments ranging from 28% to 48% to arrive at an adjusted sale price per SF calculation. See defendant's Exhibit E, p. 49. Such large adjustments result in less reliable indicators of accuracy. See *The Appraisal of Real Estate* (12th Ed. 2001) p. 447.

³ See defendant's Exhibit E, p. 56. Arotsky was of the opinion that a range of \$3,500/month for the subject's rentable space was supportable. Mathematically, \$3,500

derived from the following comparables⁴:

596 East Main Street, New Britain

This property is a single tenant building consisting of commercial garage space leased for automobile service and used car sales with the building spanning 3,508/SF.

There is a triple net lease of \$4,500/month.

20 Arthur Street, New Britain

This property is a single tenant building consisting of commercial garage space leased for automobile service with the building spanning 840 SF. There is a triple net lease of \$2,000/month.

218 New Britain Road, Berlin

This property is a single tenant building consisting of commercial garage space leased for automobile service and sales with the building spanning 1,296 SF. There is a triple net lease of \$2,500/month.

436 East Street, Plainfield

This property is a single tenant building consisting of commercial garage space leased for automobile service and sales with the building spanning 3,200 SF. There is a triple net lease of \$3,500/month.

results from adding the four comparable leases and dividing by four.

⁴
See defendant's Exhibit E, pp. 54-55.

1126 Queen Street, Southington

This property is part of a multi-tenant building consisting of commercial garage space leased for automobile services and sales with the building spanning 2,432 SF.

There is a triple net lease of \$4,000/month.

Arotsky deducted a vacancy/collection loss of 6% recognizing that with a single tenant building, the loss of that single tenant would create substantial costs in order to obtain a new tenant. For this reason, Arotsky included a 6% broker's fee in his annual operating expense calculations.

Arotsky arrived at an effective gross income (EGI) of \$39,480 by deducting \$2,520 (6% vacancy/collection loss) from the annual gross income of \$42,000. Then Arotsky deducted operating expenses of \$6,727⁵ to arrive at a net operating income (NOI) of \$32,753. Using a mortgage-equity capitalization consisting of bond investments and equity buildup relying on financial services, Arotsky used an overall capitalization rate of 9.60%. Therefore, Arotsky arrived at an estimated value for the subject property, as of the date of taking, of \$340,000. See defendant's Exhibit E, p. 60.

The commissioner's appraiser, Lo Monte, using the DC income approach, did a survey of commercial property with leases in New Britain ranging in size from 900 SF to

⁵ Calculated based on allocations for management of 5%; leasing commission of 6%; reserves of 3% and miscellaneous of \$1,200.

7,635 SF. None of the rentals surveyed were commercial leases involving automotive services. Instead the properties Lo Monte selected had tenants such as a law office, a laundromat, a package store and a sports bar. See plaintiff's Exhibit 1, p. 57.

Based on the comparable rent data, Lo Monte was of the opinion that a 2,032-SF automotive service garage and used car sales lot would command a monthly rent of \$1,750 (gross plus utilities).⁶ See plaintiff's Exhibit 1, p. 59.

Significant differences are apparent between Arotsky and Lo Monte's use of the DC income approach method. Whereas Arotsky did not include real estate taxes as an expense since a triple net lease would make the payment of real estate taxes a responsibility of the lessee, Lo Monte included real estate taxes in his development of operating expenses using the DC income approach method since the comparables selected by Lo Monte were not triple net leases.

Using a stabilized gross rental income of \$1,750/month (or \$21,000/year), Lo Monte deducted a vacancy/collection loss of 5% of gross income (\$1,050) to arrive at EGI of \$19,950.

From this, Lo Monte deducted operating expenses of \$7,903 (see plaintiff's Exhibit 1, p. 61) to arrive at NOI of \$12,047. Lo Monte, using a capitalization rate of 9.50%, which was close to Arotsky's capitalization rate of 9.60%, arrived at a final

⁶ It is assumed that the tenant will pay for electricity, heat and hot water.

conclusion of value of \$126,811, rounded to \$125,000. See plaintiff's Exhibit 1, p. 66.

Lo Monte also considered the market sales approach to value the subject property utilizing three comparables. The first is an automotive garage located at 297 South Main Street in New Britain on an irregular shaped lot containing 0.40 acres. This property sold on October 8, 2009 for \$300,000. Constructed in 1930, the building spanned 4,056 SF of GBA. Considering the adjustments Lo Monte made for location, access/site utility, building area and age/condition/type, a negative 5% adjustment resulted in an adjusted sale price of \$70.26/SF. See plaintiff's Exhibit 1, p. 51.

Sale two is an automotive garage located at 690 South Main Street in Middletown that sold on December 22, 2010 for \$170,000. The site spanned 0.73 acres and was improved with a 3,520-SF garage built in 1968. Lo Monte adjusted the sale price down from \$48.30/SF to \$41.06/SF. Id.

Sale three, an automotive garage located at 41 Pleasant Street in New Britain, sold on January 14, 2011 for \$75,000. The site spanned 0.24 acres and was improved with a 100-year-old garage spanning 1,176 SF. This sale had a questionable adjustment up of 5% for an adjusted sale price of \$66.97/SF. Id.

Arotsky and Lo Monte's use of the income approach method creates significant credibility issues because the subject was owner-occupied and was not producing rental income.

As noted by the court in its analysis of the use of the income approach under the facts in this case, and the comparables selected by the appraisers Arotzky and Lo Monte, this approach does not generate any great confidence that the results can be credibly used to determine the FMV of the subject property as of the date of taking.

The process of taking an owner-occupied property and hypothesizing it to be a leased property producing rental income has been recognized by our Supreme Court in Redding Life Care, LLC v. Redding, 308 Conn. 87, 95 n.9, 61 A.3d 461 (2013): “The [income capitalization] process is based on the principle that the amount of net income a property can produce is related to its market value. . . . This approach only has utility [when] the property under appraisal is income producing in nature. In other words, the income capitalization approach values property on the basis of the *property’s* income producing potential.” (Citation omitted; emphasis in original; internal quotation marks omitted.)

“[T]he process of estimating the value of property . . . is, at best, one of approximation and judgment, and there is a margin for a difference of opinion.” (Internal quotation marks omitted.) Carol Management Corp. v. Board of Tax Review, 228 Conn. 23, 39-40, 633 A.2d 1368 (1993).


The most credible process to use here is the selection of comparable sales that in many respects mirror the subject property. These sales are: (1) Kerin’s sale one located at

1204 Stanley Street in New Britain that sold for \$337,000 (or \$167.16/SF), and (2) Lo Monte's sale one located at 297 South Main Street in New Britain that sold for \$300,000 (or \$73.96/SF).

Recognizing the adjustments made by each appraiser to these two sales and the questionable 100% financing of Kerin's sale one, a value of \$120/SF appears to be the most credible resolution of the valuation issue in this case.

Multiplying \$120/SF by the subject property's GBA of 2,032 SF produces a FMV of \$243,840, as of the date of taking, July 14, 2011.

Accordingly, judgment may enter in favor of the defendant establishing the FMV of the subject property, as of the date of taking, at \$243,840.



Arnold W. Aronson
Judge Trial Referee