Matter of Church Aid of the Prot. Episcopal Church in the Town of Saratoga Springs, Inc. v Town of Wilton Assessor
2018 NY Slip Op 33611(U)
December 27, 2018
Supreme Court, Saratoga County
Docket Number: 2014-2052
Judge: Robert J. Chauvin
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STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

ORIGINAL

In the Matter of the Application of THE CHURCH AID OF THE PROTESTANT EPISCOPAL CHURCH IN THE TOWN OF SARATOGA SPRINGS, INC. d/b/a HOME OF THE GOOD SHEPHERD,

Petitioner,

-against-

TOWN OF WILTON ASSESSOR, TOWN OF WILTON BOARD OF ASSESSMENT REVIEW and the TOWN OF WILTON, SARATOGA COUNTY, NEW YORK,

Respondents

DECISION and ORDER

Index No: 2014-2052
RJI No: 45-1-2014-0970
Index No: 2015-2247
RJI No: 45-1-2015-0956
Index No: 2016-1711
RJI No: 45-1-2016-0919
Index No: 2017-2133
RJI No: 45-1-2017-1006

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SARATOGA COUNTY
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Before: **Hon. Robert J. Chauvin, J.S.C.**

This matter came before the court for purposes of a non-jury trial on October 23, 2018. It was a one (1) day trial. The petitioner produced their appraiser, John F. O'Neill of DelPalmer Appraisal Company. Respondent produced their appraiser, Stephen R. Clark. The appraisals had been filed and stipulated into evidence subject to cross examination. Examination of both of the appraisers was conducted and completed within the one (1) day.

In the instant case the petitioner's assisted living facility, Home of the Good Shepherd, was constructed in approximately 2007 as an assisted living facility or a senior housing facility in Saratoga County, New York at 60 Waller Road, Town of Wilton. The subject facility has 48 rooms but is licensed for 54 beds, it being the testimony that six (6) of the rooms could

accommodate two (2) persons such as a husband and wife. The two (2) story building contains approximately 40,714 square feet of space, including a commercial kitchen, a dining space, a common space, including lounges, meeting areas, administrative office, a beauty salon, activity room, nursing stations and rooms. Of note is that the individual residential rooms lack cooking facilities but are improved with a sink, counter top space, a mini fridge and bathroom. The units are small in size and are individual apartments ranging, according to the testimony, from 323 square feet to 488 square feet.

Complicating the income assessment approach for this property is the fact that the residents pay a basic fee for the designated room and common areas and for assisted living services, which include meals, housekeeping, laundry, and other services, 24 hour supervision, case management, transportation and personal care, which are business income items unrelated to the income derived from the real property.

Most of the difference here in this proceeding arises from the methodology used by the appraisers to determine the net operating income and then the capitalization rate to derive a value for the business.

Petitioner's expert has opined that rental was not the most significant parameter of the business, as the income is largely generated from the assisted living facility provision of services and concomitantly the operating expenses for the facility are intermingled with expenses that are unrelated to the real estate. Therefore the petitioner's expert attempted to extract from the operating budget, the items that were income producing unrelated to the rental and their related expenses.

Petitioner did not process a sales comparison evaluation because it did not believe it was reflective of the real estate value of the property and allegedly proper comparables were unavailable. The petitioner's appraiser attempted to isolate the real estate value using a methodology that excluded business and personal property components. To do this he determined the market value for the real estate based upon research on market rent from residential real estate for comparable uses, i.e. one (1) bedroom apartments. He then calculated for commercial restaurant rents and isolated those to eliminate the ongoing income components of the assisted living facility. He therefore removed the business value, i.e. provision of meals, nursing services, around the clock treatment, housekeeping, laundry, personal care, etc.

The petitioner's expert purportedly surveyed the Saratoga County apartment market for comparable one (1) bedroom apartments and adjusted his apartment rents for utilities, amenities, location, age and market. His adjustment grid is set forth in exhibit "1" his appraisal. He calculated an offset for common area factor and the "commercial space" to determine a potential gross income of $506,059.00. He then used a 10% vacancy rate which he testified was based upon the actual occupancy of the property and comparable vacancy rates in comparable apartment and retail properties, deriving an effective gross income for 2014 of $455,093.00. Then he deducted expenses of payroll and other expenses that he determined would not be required for a traditional market rental complex. Mr. O'Neil determined a net operating income of $181,703.00. Then using the Ryan Murphy Upstate New York Survey Band of Investment and Elwood Mortgage and Debt Coverage Ratio method, (he reviewed others as well) he calculated a capitalization rate range of 7.5 to 9.03. He picked the Elwood method at 8.42 and Band of Investment at 9.03 and averaged those for an 8.6 capitalization rate for 2013-2014. Adding taxes back in, he estimated an overall rate of 10.11 and an overall fair market value of $1,800,000.00. He processed the same valuation for the years 2015, 2016, and 2017 the rate and taxes varying slightly as set forth in his appraisals and determined the value for 2015 at $1,875,000.00; 2016 at $2,025,000.00; 2017 at $2,175,000.00.

The appraiser testified that given that for 2014 through 2016 for the appraiser's amount of fair market value, the Town's equalization rate was 100%, therefore there was no adjustment needed. For 2017, the equalization rate was 95% of full value, therefore there was a 5% adjustment which resulted in a $2,066,250.00 value for 2017.

On cross examination, the petitioner's appraiser acknowledged there was a discrete submarket for senior housing properties and therefore specific sets of buyers and sellers. Petitioner's appraiser acknowledged that none of his appraisal information was from assisted living facilities and he eschewed that information for conventional apartment rentals. Among other things that cross examination developed concerning petitioner's appraisal was that the comparable properties utilized would not have had improvements used to accommodate senior residents such as walk in showers, grab bars and wider hallways to accommodate wheelchairs.

It was developed that the petitioner's expert did not place noteworthy value in his appraisal or in his testimony for the relatively recent construction of the premises. He did not

increase the market rent for more upscale units or a plethora of amenities afforded, which would increase the rental value over comparable rental properties without the amenities, such as the lounges, meeting areas, on site beauty salon and restaurant.

Further, the comparable properties did not have communal dining rooms. Also other properties certainly did not have common area facilities that would accommodate daily senior activities. It was pointed out on cross examination this treatment of the common areas and improved facilities would not be comparable to what residential rental apartments would normally afford to its rental customers and presumably such amenities would increase the subject property value.

Further, the cross examination developed that the kitchen and dining facilities used by petitioners appraiser utilized as comparables were of a bagel shop, a Thai restaurant, a sushi restaurant, a pizzeria and a diner. These are not commonly used commercial facilities that would be found in larger restaurants, banquet houses or banquet facilities such as what is existing in the subject property and necessary to serve the 48 units, 54 beds or potentially 54 diners for fully nutritional meals at one time for all residents meals.

In addition, petitioner's expert utilized vacancy rates for commercial apartments and restaurant and used a capitalization rate for an apartment complex as against those available capitalization rates for senior housing subject properties.

Respondent presented its own appraiser, Stephen R. Clark. Mr. Clark testified he used a comparable sales approach and income capitalization approach but relied on the income capitalization approach and substantially dismissed the comparable sales approach. However, the respondent's appraiser did not consider apartment buildings in calculating his comparables and market rents. He used similar service facilities. He estimated expenses for management, diet and payroll for operating expenses using other facilities and estimated gross income based on the subject property resident charges of $2,530,000.00 for 2014 and 2015; $2,650,000.00 for 2016 and 2017.

Using a market range for the expenses, he estimated that they were approximately 83% to 85% of the total income and concluded a net operating income of $430,000.00 for 2014 and 2015 and $390,300.00 for 2016 and 2017. After adjustment for furniture, fixtures and equipment (FF&E) he determined the net operating income of $393,000.00 for 2014 and 2015 and

$357,800.00 for 2016 and 2017. However, he did not reduce the net operating income for business enterprise as he felt that the estimated adjustments he made for operating expenses accomplished the same by in essence, eliminating management and business enterprise expenses.

Respondent's appraiser further utilized the band of investment technique considering market indices to determine the capitalization rate using the Realty Rates Investor Survey and Senior Living Valuation reports, deriving a capitalization rate of 7.75% and therefore adding a tax rate to his base capitalization per respondent's assessor. He determined a market value of $4,200,000.00 for 2014 and 2015 and $3,850,000.00 for 2016 and 2017.

In tax assessment review proceedings there is an initial presumption of validity in favor of the assessment imposed by the taxing authority which the petitioner bears the burden of overcoming by a showing of substantial evidence that the assessment is excessive (*Matter of Carriage House Motor Inn v. City of Watertown,* 136 AD2 895 [2d Dept. 1988]; *Matter of E. L. Nezelek Dev. Corp. v City of Binghamton*, 61 AD2d 1108 [3d Dept. 1978]). However such standard of substantial evidence is a minimal standard.

Further, in this particular action, the methodology utilized in the petitioner's appraisal, focusing upon the value of the real estate, is an approved methodology and it is well settled that valuation is essentially a question of fact in which the court has considerable discretion in reviewing the relevant evidence concerning the specific property in question (*Matter of Miriam Osborn Mem. Home Assn. v Assessor of City of Rye*, 80 AD3d 118 [2d Dept. 2010]).

After hearing the appraisals and testimony, the court certainly finds that the petitioner has overcome the presumption of validity of the respondent's assessment. Further the petitioner's appraiser is more credible and in line with current court decisions and particularly the decision in *Matter of Miriam Osborne Mem. Home Assn.,* 80 AD3d of 118.

Particularly, as in *Matter of Miriam Osborne Mem. Home Assn.,* 80 AD3d 118, both valuation experts properly used a direct income capitalization approach to value the property. The issue being that while respondent's expert used the business enterprise income of the property and then reduced it for <u>estimated</u> operating expenses, the petitioner's appraiser used comparable apartment complexes rental rates to come up with his real estate rental value for purpose of the income of the property.

Petitioner's expert more closely followed the reasoning utilized in *Matter of Miriam Osborne Mem. Home Assn., 80 AD3d 118,* in dividing the property into its residential and commercial or business enterprise income components, examining rents charged at comparable properties, making the adjustments to determine the market rent of the residential and commercial component of the property, thereby representing the rental income that reflects the true value of the real estate.

This methodology is more appropriate and follows case law in a more logical fashion than the respondent's appraiser's use of the subject assisted living facility gross income and resort to estimation of expenses to determine the subject value and use of the projected income therefrom. Again, however, the petitioner's appraiser, as pointed out on cross examination, did not include several adjustments and further, in calculating the rental values for the apartments, failed to take into proper consideration those items such as the enhanced common living areas and site improvements that would have enhanced the rental income solely of the property. The commercial rental rates were also contested and the court feels, suspect.

However the court notes that the capitalization rates utilized by the parties vary and that rate substantially affects the parties determination of the property value as similarly does the assessment as to the net operating income for the property.

Further, as there is not empirical data or sales of the subject property that substantiates the value for the property, and no cost basis proven for the relatively new 40,714 square foot building, it is this court's opinion, after having heard the appraisers and having reviewed the appraisal documents, that the value of the property is over stated by the assessor and the respondent's appraiser but the petitioner's appraisals are under what this court would consider to be a fair market value for this real property based upon the credible proof.

The court has reviewed the capitalization of income approach in the appraisal and the line by line expense analysis and the distinctions would not be of use for purposes of the calculation of the current market value. The comparable sales approach review on the property was not illustrative.

Therefore, basically given the other basic components for the rental property that were not assessed by petitioner's appraiser and the use of a capitalization rate that was allegedly at odds with those for assisted living facilities and given the relative newness of the property, the

court finds that the property certainly had enhanced rental capacity for which there is no testimony in the record.

In light of such and extrapolating from both parties' submissions and appraisals, and attempting to calculate what a reasonable net operating income would be and relying upon the information supplied by the parties, the court will adopt the appraisals submitted by petitioner with an added adjustment factor of .35 to each year's appraisal to account for the enhanced facilities and adjustment of the capitalization rate utilized and thus it is the finding of the court that the value of the subject property is, as follows:

2014: $2,430,000;

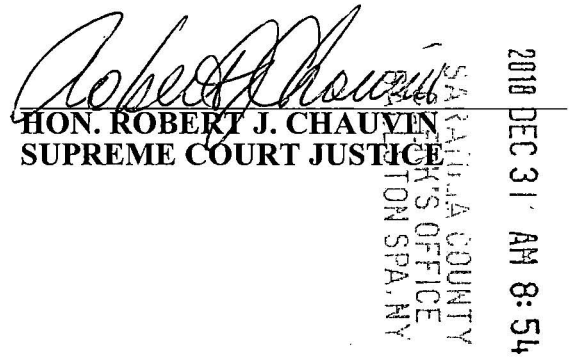
2015: $2,531,250;

2016: $2,733,750; and

2017: $2,789,437.

This memorandum shall constitute the decision and order of the court. The original decision and order and the underlying post trial submissions are being delivered directly to the Saratoga County Clerk for filing. The signing of this decision and order and the delivery of this decision and order to the Saratoga County Clerk shall not constitute notice of entry under CPLR § 2220, and the parties are not relieved from the applicable provisions of that rule regarding service of notice of entry.

DATED: December 27, 2018
Ballston Spa, NY 12020



HON. ROBERT J. CHAUVIN
SUPREME COURT JUSTICE

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Craig A. Hayner
Craig A. Hayner
Saratoga County Clerk