

FILED
09-24-2019
Clerk of Circuit Court
Waukesha County
2015CV001885

BY THE COURT:

DATE SIGNED: September 23, 2019

Electronically signed by Michael O. Bohren
Circuit Court Judge

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

WAUKESHA COUNTY

Target Corporation
Plaintiff,

CASE NO. 15 CV 1885

vs.

City of Oconomowoc
Defendant.

DECISION AND ORDER

DECISION

STATEMENT OF THE CASE

The action was commenced on September 23, 2015 by Target Corporation with an answer filed on October 15, 2015 by the City of Oconomowoc; an amended and supplemental complaint was filed on September 12, 2016 and an answer filed on September 29, 2016. A seconded amended/supplemental complaint was filed on September 21, 2017 with an answer filed on September 27, 2017.

The second amended/supplemental Complaint seeks to determine the correct assessment and correct tax determined by the City of Oconomowoc on the subject properties for 2015, 2016 and 2017; the market value asserted by Target, estimated tax and the refund due are as follows:

Year	Value	Tax	Excessive/Refund
2015	\$33,000,000	\$538,710	\$199,659
2016	33,000,000	633,527	262,924
2017	33,000,000	652,933	242,518

Target followed the procedure for a disputed real estate tax assessment as set forth in sec. 74.37, Wis. Stats.. A claim was filed; after the city disallowed the claim for an excessive tax assessment, Target commenced an action in the Circuit court for Waukesha County as a *de novo* hearing. Target paid the taxes assessed, and now seeks a reassessment and refund of taxes allegedly over paid.

The trial was conducted to the Court on April 1-4 and April 11-12, 2019; the Oral argument was scheduled for May 9, 2019 and was rescheduled to June 5, 2019. July 31, 2019 was set for decision, and at the Court's request and upon the agreement of the parties the decision was scheduled for October 2, 2019. Briefs and proposed findings of fact and conclusions of law were submitted. The decision is being issued this day, September 23, 2019.

STATEMENT OF FACTS

The property located in Oconomowoc, Wisconsin (City) is known as the Target Distribution Center (Target) was constructed on 97.56 acres in 1994 with an addition in 2001 and contains 1, 492,812(1,493,877) sq. ft . The building is constructed of tilt up concrete panels, with 35 foot clear ceilings, and contains 252 loading dock bays. The property has parking for 639 automobiles and 808 semi trailers. Two and seven tenths percent (2.7%) of the building is administrative area. The roof on the 1994 building was replaced in 2008, and on the 2001 addition in 2015.

In 2011 the City and Target settled a tax assessment dispute for the years 2011-2014 by setting the assessment at \$45,307,000. The city conducted a revaluation and reassessment in 2014 based on a Mass Appraisal Model, but the City adhered to the settlement assessment of \$45,307,700.

The City assessed the Target years 2015, 2016 and 2017 based on carrying over the settlement tax assessment at \$45,307,700.00. The parties agree that the years in question are 2015, 2016 and 2017; the parties agreed the assessment for 2016 will be applied to 2017.

Target built the facility and is the first and only owner. Thus, there is not a sale of the property for evaluation. The parcel is located on three lots, and is zoned as a business park in the City. The facility is in average to good condition.

THE LAW

The procedure for a claim asserted for an excessive assessment is set forth in sec. 74.37, Wis. Stat.. the excessive tax proceeding is a *de novo* review without regard to earlier determinations, *Nankin v. Village of Shorewood*, 2001 WI 92, ¶25. The question for the Court “is not whether the assessment is incorrect, but whether it is excessive.” *Metropolitan Assoc. v. City of Milwaukee*, 2018 WI 4, ¶40.

The assessment begins with the assessor signing an affidavit under sec. 70.49(1), (2), Wis. Stats. which is presumptive evidence that ““all such properties have been justly and equitably assessed in proper relationship to each other.””

This presumption of correctness does not apply if the challenging party presents “significant contrary evidence” or shows that the assessment “does not apply the principles of the Property Assessment Manual”. *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 Wi App 131, ¶5.

In *Bonstore*, supra, ¶8-9 the court states that the once the basic facts are established, the party against whom the presumption is asserted (in this case Target) has the burden of proving the assessment value is more probable than not “not correct” by clear and convincing evidence. If in any reasonable view of the evidence the assessment is valid, then it is upheld. *Clear channel Outdoor, Inc. v. City of Milwaukee*, 2017 WI App 15, ¶4.

In determining the assessed value the assessor must follow the dictates of sec. 70.32(1), Wis. Stats. following the Wisconsin Property Assessment Manual to determine market value. Market value is defined as:

...the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus....

Trial Ex20-9.

State ex rel Markarian v. City of Cudahy, 45 Wis2d 683, 695-96 (1970), sets forth the approved procedure for determining market value; a priority of valuation methods that must be considered by the assessor, known as the “Markarian Hierarchy” or the three tier approach are:

1. The best evidence of value is a recent arms-length sale of the property being assessed
2. In absence of a recent sale of the assessed property, then the next best evidence of value is the analysis of the sales of reasonable comparable

properties. Because comparable property characteristics differ from each other and the subject, the values of comparable properties are adjusted to create a reasonable comparison.

3. Lacking reasonably comparable sales, the assessor may look to all other methods, including the income approach and the cost approach.

See also. Sec.70.32(1), Wis. Stats.

DISCUSSION

The Court will evaluate the witnesses and the testimony with focus on City witnesses: Grota, Michael Miller, and Target witness: Anthony Uzemack. The City also presented Dr. Thomas Hamilton to challenge the methods used by Anthony Uzemack.

Michael Grota testified as the city assessor that he followed the State Manual and the case law in determining a fair and equitable market value for the property. For purposes of this case the base year is 2014, which set the Target market value at \$45,302,700.00, based on the 2014 settlement. However within the appraisal schedule for the City 2011 was considered an interim market update. Years 2015 and 2016 are considered as Review maintenance; by agreement of the parties, 2017 will follow the 2016 market value decision.

The Target parcel was evaluated and valued at its highest and best use as the method to obtain the greatest value for the owner. *Nestlé USA v. Wis. Dept of Revenue*, 2011 WI 4, ¶38. Because there was not a sale of the property, the value was determined by the sales comparison and income/cost approach., tier 2 and 3.

Target's expert witness was Anthony Uzemack, who concluded the market value for 2015 and 2016 was \$33,000,000 in a report received as Ex. 12.

Beginning with a review of Mr. Uzemack's tier 2 comparable properties, five property sale comparisons were used, which are listed below with comparison factors, Ex. 12, p. 12-84; property 1 was a lease back and property 5, although listed in the report was not considered in giving the trial opinion:

TARGET DC - 1100 VALLEY ROAD, OCONOMOWOC, WI				SALES COMPARISON APPROACH				
SUMMARY OF IMPROVED SALES								
Sale No.	Location	Sale Date	Year Built	Size GBA (SF)	Land-to-Bldg. Ratio	Ceiling Height	Sale Price	Sale Price Per SF
1	2641 Packerland Drive Green Bay, WI	January 2015	2003	600,000	1.86:1.0	33'	\$24,500,000	\$40.83
2	2929 Venture Drive, Janesville, WI	December 2013	1999/ 2009	706,800	3.43:1.0	25'9" to 30'9"	\$24,000,000	\$33.96
3	2821 Muth Court Sheboygan, WI	September 2013	1977	288,500	2.44:1	20' to 24'	\$2,250,000	\$7.80
4	880 S. View Drive Mosinee, WI	July 2013	1990	677,915	2.76:1	24'	\$4,991,448	\$7.36
5	4930 Hayes Avenue Plover, WI	January 2013	1974	199,967	16.55:1	25' to 35'	\$3,533,200	\$17.67
	Subject Property: 1100 Valley Road Oconomowoc, WI	-	1994, 2001	1,492,812	2.85:1	35'	-	-

Source: APPRAISAL SYSTEMS LLC

In reviewing the four remaining properties, all properties are smaller, and have lower ceiling heights and fewer loading docks than the subject. The variations from the subject property require the value to be adjusted. Properties 1, 2, and 3 are listed as combined warehouse/distribution centers. Property 4 is described as a warehouse. Low ceiling height and lower sales price cause adjustments which depress the value used in the comparison lowering the per square foot value to \$22.0/sq. ft. for the subject property based on the comparables. Comparable properties 1 and 2 are metal clad and 3 and 4 are metal clad and masonry. Properties 2 and 4 involved leases or purchase by leases.

The City of Oconomowoc's valuation expert William H. Miller provided a report received as Exhibit D200 with a market value for the Target subject of \$56,770,000. The chart at Ex.200, p. 95 reflects the five comparison properties utilized by the City's appraiser to determine value. Parcel 3 is composed of two parcels in close location and utilized together; the total sq. ft. is close to the subject. Comps 1 and 2 have lower heights, Comp 3 has greater height; parcels 4 and 5 are similar to the subject property as the subject's ceiling height:

Sales Comparison Approach Comparables

MD No.	Address	Sale Date	Sale Price (Adj.)	Site Area (Acres)	Building Square Feet	LTBR	Year Built	Eff. Age 1/1/2015	Percent Office	Clear Height	Walls Sprinkler	Loading Docks SF/Dock	Price per Square Foot	FS or LF
Subj	1100 Valley Road Oconomowoc	1/1/2015 1/1/2016		100.11	1,493,877	2.52	1994-2001	15	2.7%	30-32'	CTU 100%	252 5,928		FS
1	2529 Venture Dr Janesville, WI	12/27/2013	\$24,000,000	56.70	700,000	3.47	1999	15	2.0%	26-31'	MTL 100%	69 10,145	\$34.28	LF
2	2641 Parkersland Howard, WI	1/30/2015	\$24,500,000	25.70	937,890	1.87	1998-2013	15	1.8%	24-36'	MTL 100%	25 23,916	\$40.88	FS
3.1	3501 120th Ave Kenosha	5/29/2015		113.58	1,015,740	4.67	2014	0	4.0%	40'	CTU 100%	92 11,041		
3.2	11211 Burlington Kenosha	5/29/2015		48.61	513,916	4.12	2014	0	4.2%	36'	CTU 100%	111 4,630		
Tot	Two Amazon Buildings Kenosha	5/29/2015	\$132,212,000	162.19	1,531,690	4.61	2014	0	4.1%	36-40'	CTU 100%	203 7,546	\$85.31	LF
4	11681 88th St Pleasant Prairie	9/10/2015	\$22,808,700	25.36	410,694	2.69	2015	0	0.0%	32'	CTU 100%	40 10,257	\$55.54	FS
5	9800 72nd Ave Pleasant Prairie	6/17/2016	\$47,100,000	51.26	891,967	2.80	2001-2003	15	1.5%	30'	CTU 100%	71 12,557	\$52.83	LF
<i>Prior Sales of Comparable 5</i>														
5a	9800 72nd Ave Pleasant Prairie	3/30/2010	\$38,500,000										\$43.18	LF
5b	9800 72nd Ave Pleasant Prairie	6/21/2005	\$20,000,000										\$56.08	LF
5c	9800 72nd Ave Pleasant Prairie	12/17/2003	\$40,827,700										\$45.79	LF
6	2500 Beloit Ave Janesville	7/1/2017 Listing	\$20,000,000	52.06	487,930	4.65	2001	15	1.4%	26-28'	CTU 100%	94 5,191	\$40.99	FS
<i>Prior Sale of Comparable 6</i>														
6a	2900 Beloit Ave Janesville	3/4/2003	\$19,000,000										\$38.94	LF
<i>Dollar General and Mill's Fleet & Farm info per Developer Agreements; not sales but at consistent amounts</i>														
7	Dollar General Janesville	9/15/2015	\$45,342,372	122.77	1,027,220	5.21	2017	0	3.1%	32'	CTU 100%	172 5,972	\$44.14	FS
8	Mill's Fleet & Farm Chippewa Falls	3/16/2017	\$46,057,177	72.07	1,126,368	2.79	2018	0	3.0%	36'	CTU 100%	104 10,830	\$40.89	FS

© 2017 Appraisal Research Counselors
www.AppraisalResearch.com

The Miller analysis includes 8 parcels, with prior sale comparisons for 2 of the properties (5 and 6), parcel 7 is new construction with municipal financing and 8 was

under new construction with municipal assisted financing, which Mr. Miller finds operates to create a similar market value. The majority of Miller comps are tilt-up concrete construction and 2 are metal sided, which Miller opines is inferior construction.

On the issue of highest and best use, Miller found the Subject to be operating at its highest and best use. Uzemack found the subject ‘to suffer from functional and external obsolescence due to its large size and being located in a secondary industrial warehouse distribution market.’ Ex. 12-62. Target’s appraiser classifies the building as a warehouse distribution facility, which then welcomes comparisons to multi use type buildings in Uzemack’s comps.

Miller found the market for distribution centers to strong across the country and in particular in the Chicago/Midwest and Wisconsin markets. Ex. 200-24. Uzemack’s market analysis is more restrained, and appears to concentrate on warehouses. Ex. 12: 28-42, leading to lower market value for the target property. The Court finds Miller’s market analysis accurate and reliable.

Both expert witnesses also presented evidence on a tier 3 basis: income approach. Uzemack, Ex 12:87-97. Miller presented a tier 3 analysis for cost D200-128 and income D200-104 approaches. Both presented analysis that supported their tier 2 approach. In evaluating the submitted market values the Court finds the tier 2 analysis the most useful and compelling. The court finds the Miller market value more accurate and reasonable. Uzemack’s conclusions do not reflect an accurate market value for the reasons stated above.

In weighing the testimony of Uzemack and Miller, the Court is satisfied that the Miller analysis is a more accurate. The Miller comparable properties are more

comparable to the Target property from the standpoint of construction, age, and ceiling height. Ceiling height is critical to a distribution center, and lends credence to the Miller report. Miller's adjustments are not as drastic; Uzemack's adjustments appear stretched to accommodate his conclusion. Miller's view of the geographic market for distribution center buildings rings true as does his assessment of the quality of the Target building. The court accepts Miller's market value at \$56,770,000.00 as a more accurate and reasonable reading of market value than Uzemack's \$33,000,000.00. In light of all of the evidence, Target's view of market value is contrary to the evidence received.

CONCLUSION

In light of the briefing, arguments and evidence presented at the trial, the Court is satisfied that the City's presumption of correctness is maintained, in that the assessor applied the principles of the Property Assessment Manual and that the assessment is not excessive. The Miller conclusion of market value shows that the assessment was arguably low. Miller's conclusion was approximately \$11,000,000 higher.

Target did not present significant contrary evidence to the assessment, and did not establish that the assessment for 2015 and 2016 is excessive. Miller's valuation is more credible than Uzemack's. Target's position was posited on a drop in market value and market vitality from the 2011 settlement agreement forward. The evidence showed that market value is dynamic and increasing over the years involved, which undermined Target's position.

The city's assessment is sustained and Target's challenge is dismissed. The assessment for the Target property for 2015, 2016 and 2017 is set at \$45,307,700.00.

ORDER

Now therefore it is ordered that Target's second Amended/Supplemental Complaint is dismissed on its merits. The claim for reassessment and a refund of excess taxes paid in 2015, 2016 and 2017 is denied. The City may recover statutory costs and disbursements.

It is further ordered that the Oral ruling scheduled for October 2, 2019 at 1:30 PM is removed from the calendar; the Status Conference in Case No. 2018CV1896 remains scheduled.

So ordered.