LAUREL RACING ASSOCIATION LIMITED PARTNERSHIP	*	IN THE
v.	*	MARYLAND TAX COURT
SUPERVISOR OF ASSESSMENTS OF ANNE ARUNDEL COUNTY	*	No. 17-RP-AA-0874

MEMORANDUM AND ORDER[1]

This appeal arises from a dispute between the Supervisor of Assessments of Anne Arundel County ("Supervisor") and Laurel Racing Association Limited Partnership ("Petitioner") regarding the valuation of the Laurel Race Course ("Race Course") property. The date of finality for valuation consideration is January 1, 2017.

Petitioner presented its case through an appraiser, Thomas Weigand, with the Supervisor presenting its case through an assessor, Yonas Tilahun. The parties stipulated to the expert qualifications of these witnesses, enabling them each to offer an opinion as to the fair market value on the date of finality of the Race Course. Both witnesses submitted written appraisals.,

The Race Course comprises 287.23 acres. The Court incorporates herein the description of the site contained in Mr. Weigand's appraisal. Petitioner's Exhibit 1, pp. 56-59.

The parties stipulated that the fair market value of the improvements was $13,100,000. So, the dispute concerns the valuation of the land.

[1] The Court issued an oral opinion at the conclusion of the hearing which is stricken and which this Memorandum and Order supersedes.

The parties agreed 141 acres of the site was non-useable wetlands or floodplain. Mr. Weigand valued this acreage at $850,000 with Mr. Tilahun valuing the acreage at $105,750. The remaining 146.23 acres of usable land was valued by Mr. Weigand and Mr. Tilahun at $16,085,300 and $25,164,900, respectively.

Mr. Weigand suggested that the ultimate highest and best use of the property was for a planned unit development (PUD), which would require a zoning change. Seizing on Mr. Weigand's failure to testify that there was a probability of this zoning change within a reasonable time, the Supervisor, in its Motion for Reconsideration, argues that Mr. Weigand's valuation opinion should not be considered.

The Supervisor's argument reflects the decision in *Shell Oil Co. v. Supervisor*, 278 Md. 659, 665 (1976), where the Court, in applying accepted eminent domain standards to assessments, stated that "...[a] valuation based on a zoning classification other than that currently existing must be accompanied by evidence of a probability of rezoning to that classification within a reasonable period of time." See also *Huchison v. B.G.&E*, 241 Md. 329 (1966). In *Shell Oil*, the taxpayer presented three comparable properties to support an argument for a lower valuation for the gasoline service station property at issue. The Supervisor presented testimony that the likelihood of securing the special exception needed to develop the comparables for a gasoline service station was remote and speculative at best. While the taxpayer suggested the needed special exceptions were "...routinely or

perfunctorily granted...," the Court noted "...our cases indicate to the contrary." Hence, the comparables could not be viewed as reflecting potential use as a gasoline service station.

The Court does not find the Supervisor's argument convincing. Mr. Weigand did not base his valuation on comparables with PUD zoning. He sought comparables with zoning similar to the subject's predominant W-1 zoning and, for his two comparables with residential zoning, he adjusted up to secure comparability with W-1 zoning. See Petitioner's Exhibit 1 p. 104. Mr. Weigand's premise in choosing his comparables was to identify raw land properties which had not yet engaged in development processes.[2] In this regard, he noted he "...was trying to match the state of development of these properties ....with the state of development that someone acquiring Laurel Park would be at." He felt such properties best reflected the realities of developing the large tract at issue in accordance with a needed future rezoning, which he indicated would likely be as a PUD. It is now incongruous for the Supervisor to protest this reference by Mr. Weigand to PUD zoning, when the only comparable offered in the case with PUD zoning was Mr. Tilahun's comparable number 1. See Respondent's Exhibit #1, p. 28.[3]

The Court must now reconcile the conflicting opinions of the experts regarding the land's valuation. In doing so, the Court will first address the

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[2] Apparently, Mr. Tilahun shared this view as neither he or Mr. Weigand valued the property to continue as a racetrack facility.

[3] With this ruling, the Court declines to address whether this issue was not properly preserved, as Petitioner argues.

147.23 acres of usable land. In analyzing the appropriate valuation for this usable land, the Petitioner and Supervisor each presented four comparables. Petitioner's Exhibit 1, p. 104 & Respondent's Exhibit 1, p. 28.

The Court will only accept one of Petitioner's four comparables, Comparable 3. Mr. Weigand testified that his Comparable 1, an Ohio racetrack sale, was for illustrative purposes only and was not considered in assessing valuation. The Court accepts the Supervisor's assertion that 40 of the 47 acres comprising Comparable 2 was not useable. Mr. Weigand was not aware of this limitation when presenting his testimony and could not rebut the Supervisor's assertion. Comparable 4 was a bank REO sale, which creates a cloud on it being an arms-length transaction. Mr. Weigand based his conclusion that the transaction was arm-length on a conversation with a broker. But, aside from the broker's bald statement, Mr. Weigand could not provide any further detail, including the length of time the property was on the market. Hence, Petitioner's Comparable 3 is the only comparable offered by Mr. Weigand that the Court will consider.

In analyzing the adjustments to his comparables needed to reconcile differences in zoning Mr. Weigand noted,

> "[t]he subject's W-2 zoning is very liberal and offers a very broad variety of commercial uses. The zones for Comparable #2-#4 are more limited. Comparables #3 and #4 are primarily residential zones which only permit less valuable residential uses. For these reasons, these comparables are given upward adjustments." Petitioners Exhibit 1, pp. 106-107

Accordingly, Mr. Weigand adjusted the value of the two comparables zoned residential, Comparables 3 and 4, upward by ten percent. But, he gave the

same ten percent adjustment to Comparable 2, which was zoned to a more intense zoning classification of M-H or Manufacturing-Heavy. Petitioner's Exhibit 1, p. 99. To resolve this inconsistency, the Court will upward adjust Comparable 3 an additional ten percent, reflecting the "less valuable" residential zoning of that parcel. The additional adjustment computes to an adjusted valuation for Comparable 3 of $123,402 per acre.

The Court accepts Mr. Weigand's assertion that the Supervisor's comparables were generally further along the development process and would need additional downward adjustments to align them with the appropriate raw land sale. Comparable 1 already had PUD zoning, which merits an additional ten percent downward adjustment, and a completed on-site water plant, meriting a further five percent downward adjustment. These additional adjustments compute to an adjusted valuation for Comparable 1 of $129,710 per acre. Comparable 4 is a finished lot that was subdivided off a lot developed by an Acura dealer, that has street frontage with curb and as noted by Mr. Weigand, was "ready to go." Hence, the same additional ten percent downward adjustment as for Comparable 1 is merited with an additional five percent downward adjustment for the frontage on a major roadway. These additional adjustments compute to an adjusted valuation of Comparable 4 of $135,745 per acre.

The Court will not consider Mr. Tilahun's Comparables 2 and 3. Comparable 2, is out of sync with the other comparables, as, at the low end, it

is approximately 26 percent higher than the other comparables.[4] And, there is no public record as to the Comparable 3 sale, which creates a cloud on the transaction and precludes a thorough analysis. See Respondent's Exhibit 1, p. 26.

So, the Court must reconcile the three comparable sales it has determined as germane. In doing so, the Court will accept Mr. Tilahun's methodology of simply averaging the adjusted sales. This computation results in a per acre valuation of $129,619 or $18,954,186 for the 146.23 acres of usable land.

The remaining reconciliation is the disparity in valuation for the non-usable land. In this regard, the Court accepts the higher valuation of $850,000 offered by Mr. Weigand, recognizing the value of this open space land in securing density concessions for developing the entire tract. Adding this valuation to the $18,954,186 valuation determined for the usable acreage and the stipulated $13,100,000 for the improvements, results in a fair market value for the entire tract of $32,904,186.

Accordingly, it is this 26th day of December, 2018, by the Maryland Tax Court **ORDERED** that the decision of the Property Tax

[4] This disparity likely reflects the intensity of the uses permitted pursuant to the preliminary approval for the property's development. Mr. Wiegand testified this preliminary approval was for a "retail power center" that would include 150 retail stores, a 568,000 square foot outlet center, a 130 room hotel, and 250 apartments.,

Assessment Appeals Board for Anne Arundel County is **REVERSED** and the full cash value of the property is $32,904,186 .[5]

CC: Stuart Levine, Esq.
Jeffrey Comen, Esq.
Kent Finkelsen, Administrator

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

[5] Issues raised and differences in the experts analysis not specifically addressed by the Court were deemed de minimis.