REDUS MD Land LLC	*	IN THE
	*	
v.		MARYLAND TAX COURT
	*	
SUPERVISOR OF ASSESSMENTS OF SOMERSET COUNTY	*	No. 14-RP-SO-0330 (1-6, 8-11)
	*	

MEMORANDUM AND ORDER

This case arises from a dispute between the Supervisor of Assessments for Somerset County ("Supervisor") and REDUS MD Land LLC ("Taxpayer") regarding the valuation for tax year 2013 of ten finished lots in Crisfield titled to the Taxpayer, which were originally subdivided for low-rise condominium development. The Supervisor argues for a $5 million valuation, consistent with the valuation set by the Property Tax Assessment Appeal Board, while the Taxpayer argues for a valuation of $160,000. The date of finality for valuation purposes is January 1, 2013.

The Taxpayer offered testimony from an expert in real estate valuation, Calvin Thomas, and the expert assessor for the Supervisor, Leslie Pruitt. The Supervisor also offered testimony from Mr. Pruitt. There was no dispute regarding the experts' credentials to offer an opinion regarding the valuation of the property.

The properties at issue are individual finished condominium pads on ten subdivided lots in Crisfield, with public water and sewer available. There is also a common lot on which is situated a gazebo, pool, bathhouse, and boat slips.[1] Petitioner's Exhibit #2, p. 8. On the remaining lot, there is a developed 16-unit

[1] The value of this lot is not disputed and is included in the $5 million assessment the Supervisor urges.

condominium. This lot on which the condominium was built sold to NRV, Inc. in 2005 for $1.6 million. *Id.* at p.10. The 7.791 acre property on which the 12 lots are located is bordered on two sides by the Annemessex River. Petitioners Exhibit #1, pp. 24-25.

The originally approved development plan for the remaining ten undeveloped lots would permit 216 condominium units, apportioned as follows: two 16-unit buildings, two 20-unit buildings, and six 24-unit buildings. *Id.* at 24-25. It is not disputed that a Consent Order executed July 31, 2009, of which the Court takes notice, authorizes this development, as of the date of finality. See Respondent's Memorandum of Law, Exhibit A; Petitioner's Reply Memorandum, p.2; See *Lerner v. Lerner*, 132 Md. App. 32, 40-41 (2000). This Consent Order supersedes any intervening "...legislative, regulatory, or other action..." by Crisfield. Consent Order, § 2.

Mr. Thomas opined, in relevant part, that the development of the 216 condominium units was not feasible, as the sales price of the units would not cover the construction costs.[2] With condominium development not feasible, Mr. Thomas concluded the only economically viable development of the ten lots would be for residential single-family homes. The development he specifically presented as the highest and best use was five residential lots, valued in the aggregate at $160,000. Petitioners Exhibit # 1, p. 46.

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[2] Mr. Thomas also opined that the approval for the units had expired and intervening changes to the Crisfield zoning ordinance would greatly limit condominium development, providing further support for his premise that condominium development was not feasible. The Consent Decree renders this opinion irrelevant.

At the conclusion of Mr. Thomas' testimony, the Supervisor made a motion for judgment. The motion was premised on Mr. Thomas valuing all ten lots as a single entity.[3] Citing *Nes v. Supervisor*, In the Court of Special Appeals, September Term, 1995, No. 607 (1996) and *St. Leonard Shores Joint Venture v. Supervisor*, 307 Md. 441 (1986), the Supervisor argues the lots had to be valued individually. The Court disagrees and will deny the motion.

In *St. Leonard Shores Joint Venture, supra.*, the Court rejected a taxpayer's effort to reduce lot valuations by discounting for the "sell out" period of the 105 vacant lots in the subdivision titled to the taxpayer, holding that "...the assessor is to assess each lot as if a willing buyer exists. " *Id.* at 446. In this particular instance, that holding does not impair the relevance of *Susquehanna Power Company v. State Tax Commission*, 159 Md. 334, affirmed, 283 U.S. 291 (1931), the case upon which the Taxpayer relies.

Susquehanna Power held that it was appropriate to value multiple lots as a single entity when, if the lots were not used together, no single lot would have any use. *Id.* at 355. The highest and best use Mr. Thomas deems the only viable use for the ten lots is to re-subdivide them into five lots for single-family residential use. Hence, Mr. Thomas' valuation methodology renders the individual 10 lots valueless, with them only having a value when combined as a single entity for re-subdivision. In this circumstance, *Susquehanna Power* permits valuing the ten lots as a single

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[3] In response to the motion and in an apparent effort to offer an alternative per lot valuation, the Petitioner had Mr. Pruitt testify in its case in chief. The Petitioner sought to elicit from Mr. Pruitt a per lot valuation premised on the development restrictions cited by Mr. Thomas. The Consent Decree renders Mr. Pruitt's testimony in this regard irrelevant.

entity, as Mr. Thomas chose to do. The analysis in *Nes v. Supervisor, supra.* supports this conclusion.

In *Nes*, the taxpayer sought to value seven contiguous parcels "...in the aggregate as components of a coordinated development project." *Id.* at slip opinion 1-2. The Court rejected this valuation methodology, noting that "[u]nlike the parcels in *Susquehanna Power Co.*, the parcels here involved do not share common zoning, nor do they share a common use." *Id.* at 6. Here, the parcels share a common zoning and a common use. And, while it appears the parcels in *Nes* could develop individually, Mr. Thomas premises his valuation on the ten parcels not being able to develop individually.

So, this may be an instance, such as that considered in *Susquenhanna Power Co.* , "..where ...[a valuation]...may depart from the usual method of arriving at full cash value." *Id.* at 5. This usual method is reflected in the SDAT directive cited in *St. Leonard Shores Joint Venture v. Supervisor, supra.* at 449, requiring "...the assessment of subdivision lots on an individual basis." This directive has been acknowledged by SDAT's counsel in other cases as being administrative and subject to exception, when appropriate. See *Naomi Associates v. Supervisor*, MTC No. 13-RP-PG-0417, 3-4 (2013).

While the Court finds offering the aggregate valuation is not legally infirm, it choses to reject Mr. Thomas' analysis, finding it flawed for several reasons.

Initially, over the Supervisor's objection, the Court permitted Mr. Thomas to offer an opinion regarding the re-subdivision required for his valuation opinion. The Court now finds that opinion not credible.

Mr. Thomas' credentials do not indicate any specific expertise in subdivision design, such as that likely to be had by a land planner or engineer. Petitioner's Exhibit #1, p. 76. This lack of expertise became evident during his testimony.

During that testimony, he acknowledged he did not know the minimum lot size permitted for the subdivision he was proposing. This knowledge would be a critical component to determine the maximum lots that could be approved in the subdivision. In addition, Mr. Thomas testified wind and sand exposure required the lots to be set back from the water, thereby likely reducing the potential number of lots. See Petitioner's Exhibit #1, p. 25. Yet, the existing condominium building directly abuts the water. Petitioner's Exhibit #2, pp. 5 &19.

Mr. Thomas proposed the five lots be 1.3 to 1.4 acres each.[4] It appears a more thorough analysis with the requisite expertise would enable more lots and a greater value for the subdivision than Mr. Thomas suggested.[5]

Second, Mr. Thomas opined that a zoning change is required to permit the single-family residential use the re-subdivision envisions.[6] As noted in *Shell Oil Co.*

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[4] Mr. Thomas had difficulty articulating the size of each lot, testifying also the size would be .66 of an acre and around an acre.

[5] Mr. Thomas also acknowledged not being aware of the Smart Growth dictates regarding residential lot size goals. Those goals are at least 3.5 units per acre for development on water and sewer, such as here, which is greater than Mr. Thomas' proposal. State Finance & Procurement Article § 5-&B-03(e)(3)

[6] Petitioner now suggests a zoning change is not needed as the five lots could be developed as "tourist homes," which is an authorized use under the existing TM Tourist Marine zoning, as a special exception. Crisfield Code, Article XII § 112-59 A. (4). This use is consistent with a stated purpose of the zoning, which is to "...promote the development of tourist-serving businesses." Id at § 112-56. Mr. Thomas clearly never contemplated this tourist homes' use as his valuation

v. Supervisor, 278 Md. 659, 665 (1976), where the Court applied the accepted eminent domain standard to assessments, "...[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." Mr. Thomas premised his conclusion that the necessary zoning change would be forthcoming primarily on a conversation with Crisfield's City Inspector, Noah Bradshaw, without any further specific land use analysis cited. See Petitioner's Exhibit # 1, p. 32. Not even a description or citation of the contemplated zoning category was provided. The Court finds the offered evidence insufficient to establish the requisite "probability of rezoning within a reasonable period of time."

Third, the ten lots are subject to a condominium regime. Respondent's Exhibits # 3 & 4. Hence, for the re-subdivision to proceed, a termination of the condominium and the termination period would be required. Real Property Article § 11-123 & Respondent's Exhibit #4, § 2.24. Mr. Thomas offered no evidence regarding the probability of or process for these terminations.[7]

Last, the premise for Mr. Thomas' conclusion that a sale of the ten lots for condominium development is not economically viable is legally infirm. He premised his valuation analysis on there not being a market for the entire property, all ten lots with 216 units. According to *St. Leonard Shores v. Supervisor, supra.* his valuation

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presumed "five detached single family lots" with "...[t]he most probably user for the subject property [being] ... a homeowner." Petitioner's Exhibit # 1, p. 33.

[7] Mr. Thomas is likely familiar with condominium issues, having served on the Governor's Commission of Condominiums from 1979-1981. Respondents Exhibit #5, Appendix, Qualifications.

analysis should have focused on a presumptive willing buyer and seller for each individual lot, which at the most would comprise 24 units.[8]

Regardless, Mr. Pruett rightly disputed Mr. Thomas' opinion that the development of the lots was not economically viable. Relying on adjusted comparable land sales, Mr. Pruitt opined the land value for each individual unit was properly set at $23,140.[9] Petitioner's Exhibit #2, p.15. Relying on the $230,000 August 2012 sale of a unit at the Harbour Lights condominium that Mr. Thomas cited, Mr. Pruitt testified the market supported a $225,000 sale price for each unit. Petitioners Exhibit # 1, p. 21. Testifying that with the sites finished "all you need to do is get approval and start building," he opined construction costs per unit would be $150,000. With the land cost added to the construction cost Mr. Pruitt then indicated the total cost per unit would be approximately $172,000 per unit, rendering condominium development economically viable.

To support his conclusion that condominium development was not economically viable, Mr. Thomas chose to rely on the $185,900 January 20, 2012 sale of a unit in the developed building on the subject property, suggesting a $175,000 sale price, which would be below his estimated $ 212,000 per unit

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[8] Petitioner repeatedly suggests Mr. Pruitt premised his appraisal on the sale of or demand for all 216 units. This suggestion is erroneous as his appraisal properly reflects, in accordance with *St. Leonard Shores v. Supervisor, supra.*, separate valuations and descriptions for each lot. Petitioner's Exhibit # 2, pp. 8 & 10.

[9] Mr. Pruett explained this per unit land valuation contemplated including the common area and that without the common area included the per unit land valuation was $22,209.

construction cost.[10] Petitioner's Exhibit # 1, p. 21. His sales price is below the $209,580 average condominium sales price for 2012 he reported. *Id.* at 20.

Mr. Thomas declined to rely at all on the $230,000 sale upon which Mr. Pruett relied, suggesting the Harbour Lights condominiums had a far superior location. But, in his 2010 appraisal, Mr. Thomas specifically cited Harbour Lights as a comparable property. Respondent's Exhibit 5, p. 17. Mr. Pruett rejected the $185,900 sale upon which Mr. Thomas relied, explaining he was familiar with the buyer, who was an opportunistic buyer of properties for investment purposes, apparently a "flipper" of properties.

Mr. Thomas' October 2010 appraisal[11] of the subject property was not premised on the condominium development not being economically viable. That appraisal lends credence to Mr. Pruitt's opinion of economic viability on January 1, 2013. In his 2010 appraisal, like with the subject appraisal, Mr. Thomas cited a distressed market with the highest and best use being "[r]esidential development when the market improves." Respondent's Exhibit # 5, pp. 1 & 17. But, he then opined a per unit sales price of $250,000 with a per unit land value of $80,000.[12] *Id*

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[10] Mr. Thomas testified the disparity between the higher actual sale price and the $175,000 sale price he used in his economic viability analysis reflected him being "...a little pessimistic" with him conceding this sales price was "...probably a little low."

[11] The 2010 appraisal was not specifically for purposes of a tax assessment appeal as its effective date is October 19, 2010. Respondent's Exhibit # 5. P. 1. The 2013 appraisal was clearly for tax assessment appeal purposes, as its effective date is January 1, 2013, the date of finality. Petitioners Exhibit # 1, p. 1.

[12] In his subsequent valuation analysis, and in his 2013 appraisal, Mr. Thomas applied a discount, which, in part, contemplated carrying costs for the lots as they

at p. 30. The $56,860 or 71% difference between Mr. Thomas' 2010 land valuation and Mr. Pruett's $23,140 land valuation provides a sufficient cushion to suggest economic viability on January 1, 2013, pursuant to Mr. Thomas' 2010 perspective. Hence, the Court choses not to accept Mr. Thomas' opinion regarding the economic viability of selling the lots for condominium purposes, as authorized by the Consent Decree.[13]

Accordingly, it is this 30th day of March, 2015, by the Maryland Tax Court **ORDERED** that the decision of the Property Tax Assessment Appeals Board for Somerset County is affirmed.[14]

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.

cc: T. Scott Basik, Esq.
David M. Lyon, Esq.
Kent Finkelsen, Administrator

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sold. This discount is inappropriate pursuant to *St. Leonard Shores v. Supervisor, supra*. Respondent's Exhibit # 5, p. 31 & Petitioner's Exhibit # 1, p. 35

[13]Petitioner's suggestion that the ten lots are landlocked and not salable individually ignores the ownership interest all ten lots have in the common lot. *Anderson v. The Gables*, 404 Md. 560, 576-577 (2008). The 2005 sale of the lot for the developed building evidences the other 10 lots' salability.

[14] Issues raised and differences in the experts analysis not specifically addressed by the Court were deemed de minimis. Also, references in Petitioner's memoranda to practices of assessors in others cases and a subsequent valuation of the property was not considered by the Court as this evidence was not offered during the hearing or is irrelevant. Petitioners Memorandum of Law at pp. 10-11 & Petitioner's Reply Memorandum at p. 10.