Docket No. HHD-CV 14-5038334S	**:**	**SUPERIOR COURT**
CITY OF HARTFORD	**:**	**J.D. OF HARTFORD**
VS.	**:**	**AT HARTFORD**
CBV PARKING HARTFORD, LLC ET AL.	**:**	**DECEMBER 5, 2016**

MEMORANDUM OF DECISION

I. INTRODUCTION

The captioned matter is an appeal of the assessment by the City of Hartford (hereinafter "City" or "Hartford") for its acquisition, by the power of eminent domain, of parcels of property owned by the defendants in Hartford, Connecticut. On November 3, 2014, the City filed a Statement of Compensation and deposited $1,980,000 with the Clerk of the Superior Court of the State of Connecticut in the Judicial District of Hartford. The defendants filed an appeal and application for review on December 3, 2014. A Certificate of Taking was issued by the Clerk of the Superior Court on December 9, 2014.[1]

[1] The court feels obliged to make it clear that, in this opinion, the date of taking is the date on which the evaluation of the property is premised, and outside of the trial in this matter and the briefs submitted, nothing else that has occurred since December 9, 2014, has had any effect on the decision-making reflected herein.

Trial of the matter went forward on five days in February, 2016. Five witnesses testified: the defendants presented the testimony of the former owner of the subject property and two appraisers and the City presented the testimony of two appraisers as well. Numerous exhibits were entered into evidence to assist the court in its decision-making, and on May 27, 2014, the parties submitted post-trial briefs.[2]

II. UNDERLYING FACTUAL FINDINGS

A. The Land

The property consists of fourteen tax lots identified as 1181, 1185, 1189, 1209, 1213, 1229, 1243, 1261, 1267, 1269, and 1269H Main Street, 425 and 426 Ann Uccello Street, and 44 Chapel Street North in Hartford, Connecticut. The property can otherwise be described as three lots: (1) a parcel of land on Main Street directly across the street from, and south of, the new Dunkin' Donuts Park minor league baseball stadium ("A" on the attached diagram); (2) a parcel on the corner of Ann Uccello and Chapel Streets ("B" on the attached diagram); and

[2] The parties agreed to extend the time for the filing of the court's decision to December 5, 2016.

(3) a parcel of land diagonally across the street from the entrance to the new baseball stadium (on the corner of Main and Pleasant Streets -- "C" on the attached diagram). The property is in the B-1 and B-2 zoning categories, the most permissive in Hartford, permitting commercial and multi-family uses. The property is 2.89 acres or 125,888.4 square feet.

B. Recent City History

The property at issue is just north of the Hartford "downtown" area and is separated from that area by Interstate Route 84 (I-84). Historically, this northern part of Hartford has become almost a separate entity from the core downtown area of Hartford. It has contained, and continues to contain, many rundown and/or abandoned buildings; deserted lots; and large flat, open and disintegrating parking areas leased mainly by insurance companies and other businesses located on the south side of I-84 for their employees' use.

Since the late 1990s, Hartford has experienced a spurred interest in the development of its downtown area, with the

erection of new modern hotels such as the Hartford Marriott Downtown and renovation of other hotels; the construction of the Convention Center and the Science Center; the addition of a downtown movie theater; construction, creation, and renovation of apartment spaces; and remodeling and transition of older buildings for uses by higher learning educational entities, such as the renovation of the Hartford Times Building for the use of the University of Connecticut. Almost all of the renovation development, however, has taken place south of I-84.

In 2003 and 2004, the City commenced efforts to expand the use of the area north of I-84. Among other things, it constructed a Public Safety Complex, a new Hartford police headquarters, and it renovated an elementary school into the Capital Preparatory Magnet School.

In late 2008 and early 2009, a redevelopment plan for the the area north of I-84 was approved by the Hartford Planning and Zoning Commission, the Hartford Redevelopment Agency, and the Hartford Court of Common Council. The stated primary goal for the Downtown North Project (DoNo) was to remove obsolete

and blighted buildings, rehabilitate historic structures, and create an opportunity for educational, commercial, and residential development. Through the redevelopment plan the City hoped to achieve a vital, strong, and effective link between the area north of I-84 and the downtown area south of I-84, to expand the property tax base, to improve public safety, and to enhance the image of downtown Hartford as a secure, habitable, and inviting environment. The plan called for acquisition of properties by purchase of land or, if necessary, by the use of eminent domain in order to provide opportunities for development.

In 2010, the City acquired a piece of land next to the property at issue and demolished the eyesore building thereon, commonly referred to by citizens as the "Butt Ugly" building, hereinafter the "Ugly" property. The city also acquired other properties in the area, but definitive redevelopment plans had not yet materialized.

C. Covered Bridge Ventures

The defendants in this matter are CBV Parking Hartford, LLC, CBV Parking Hartford Chapel, LLC, and CBV Hartford Parking Ann, LLC. They will be collectively referred to in this decision as Covered Bridge Ventures or CBV.

Mr. Pennock J. Yeatman is a principal in CBV. He has been an investor in, and operator and developer of, real estate for more than twenty-five years, and he has been successful in generating substantial income returns for those for whom and with whom he has worked. Mr. Yeatman had previously been affiliated with a firm called Luber-Adler, and Mr. Yeatman's responsibilities and experience included all phases of real estate, including management and development of multi-family units, retail space, office buildings, malls, industrial parks, and condominium developments, as well as other land development.

In approximately 2007, Luber-Adler acquired a company called Central Parking, which owned numerous parking garages and surface parking lots in several states, including the property that is the subject of this litigation. Mr. Yeatman was affiliated with Central Parking in several ways: he served on its Board of

Directors; he worked for one of the largest shareholders of Central Parking; and he was a real estate advisor to Central Parking. In 2009, Central Parking began to experience financial difficulties, and Mr. Yeatman was charged with the selling of properties owned by Central Parking in order to pay off mortgage, tax, and real estate debt. Mr. Yeatman was successful in negotiating the sale of at least twenty properties in various states.

A final component of this demanding challenge was the need to procure satisfaction of Central Parking's corporate debt. A restructure of this debt was developed by way of arranging a merger of Central Parking with a company called Standard Parking, a publicly traded company. Because Standard Parking did not own any real estate, one of the conditions precedent to the merger between it and Central Parking was that Central Parking rid itself of the ownership of real estate. A few parking lots remained unsold. One of them was the subject property in Hartford.

Mr. Yeatman engaged in significant research about the subject property. He reviewed the 2008 redevelopment plan for the Downtown North Project in Hartford and did a zoning and environmental investigation to ascertain whether there were any impediments to future development. In his survey of the property, he discovered that so-called "gangway easements" existed. These are rights that permit pedestrians to cross the property and would affect future developments.

Central Parking needed to dispose of the Hartford, Connecticut property, and the revenue therefrom was not major concern for Central. The property was not put on the market, and Mr. Yeatman was afforded the opportunity to buy it. He did so for the amount of $373,946. This price did not reflect the actual value of the property because of Central Parking's pressing need to get rid of the property in order to effectuate its merger with Standard. This was not an arms' length transaction in that it was the purchase from a distressed seller, in which Mr. Yeatman did not have to compete with any other potential

buyers. Indeed, the price paid by Mr. Yeatman was less than Hartford's tax evaluation of the property.

On July 12, 2012, CBV took ownership of the entire property under one warranty deed. Mr. Yeatman divided the property into three separate parcels thereafter, with each parcel owned by one of the three CBV defendants in this action, so that CBV could take advantage of selling individual parcels if the opportunity arose during CBV's ownership of the property. Mr. Yeatman did not have the opportunity to follow through on these plans because of the City's taking of the property.

Mr. Yeatman increased the operating revenue of the property, a parking lot. He took out a substantial loan, $500,000, that he personally guaranteed, in order to accomplish the improvements and changes necessary to effectuate the upkeep and development of the property, and to keep the parking lot debt-free and profitable until promising development plans materialized. Mr. Yeatman was able negotiate elimination of the gangway easements, and he kept the parking lot leases

limited in terms of their timeframes in order to retain flexibility to develop or sell the property.

D. Other Events Prior to the Taking

The parcel of CBV's land on Main Street, directly across from the ballpark stadium, surrounds on three sides a parking lot that exited onto North Chapel Street and that property was formerly owned by LAZ Parking. (See "A" and "LAZ" in the attached diagram). On October 12, 2012, the City bought the LAZ lot for $1,280,000.

In May, 2013, the City offered to buy all of CBV's property for $1,170,000. The City made no mention of its consideration of constructing a minor league baseball team ballpark across from the property. In addition, the amount offered to CBV was premised on an appraisal that used CBV's 2012 purchase of the property as a comparable sale, which was not an accurate depiction of that sale. CBV declined that offer, indicating that the property was considerably more valuable and further responding that CBV was not under any financial or other pressure to sell the property at that price at that time.

There were continuing negotiations between CBV and the City but there never was any suggestion by the City at any time during its negotiations with CBV of the construction of a minor league ballpark.

On July 1, 2014, the City solicited plans for the construction of a minor league ballpark and development of the neighborhood surrounding the ballpark. This invitation, commonly known as a Request for Proposals (RFP), offered an opportunity to participate in a public/private partnership in "Completing Hartford's Neighborhoods with Mixed-Use Development & Proposed Minor League Baseball Facility." The deadline for submission was August 1, 2014. In the description of the land for which plans were requested in the RFP, the City showed on its diagram map a proposed site for a minor league baseball stadium on Main Street, just north of I-84, and also showed the property owned by CBV as part of the project on which it was seeking development proposals.

The RFP prepared by the City presented a scenario of great promise and opportunity for development of the area, stating in

the mayor's presentation letter in boldface type: "This area will no longer represent the 'edge' of something, but the bustling hub of a gateway neighborhood."

The City did not extend the opportunity directly to Mr. Yeatman to respond to the RPV. Indeed, he did not learn of the RFP and the ballpark until sometime in July, 2014, and he recalls that he probably learned of the plans upon reading about them in the Hartford Courant. According to Mr. Yeatman, the timeframe for submissions was much shorter than he had ever experienced with similar RFPs because it usually takes at least forty-five to sixty days to procure the information necessary to prepare a proposal. Because there was only a couple of weeks left before the deadline, Mr. Yeatman did not have an opportunity to submit a proposal. [3]

Of the three proposals presented to it, the City chose the one prepared by DoNo, in collaboration with CenterPlan Development Company and Leyland Alliance. In its submission, DoNo advised the City that it was proposing a "dynamic new

[3] It was clear from the evidence presented at trial that Mr. Yeatman did not feel that he had been treated fairly by the City, and that may or may not be the case. However, that possibility does not affect the value of the subject property.

neighborhood" that would include not only the ballpark, but also retail businesses, restaurants, a brewery with a rooftop beer garden, a grocery store and over 600 residential units. Indeed, DoNo indicated that it had secured "letters of interest" for the construction of the grocery store and the brewery. It suggested the construction of a new municipal office building directly across from the ballpark stadium. It produced a market study that it had commissioned from Robert Charles Lesser & Co. in Bethesda, Maryland, the conclusion of which was:

Given the current dynamics between employment, the state of housing opportunities in outlying areas of Hartford, and the tremendous opportunity for placemaking around the ballpark, the necessary conditions are in place to redefine what it means to live downtown. There is currently no location in the region where young professionals can live in a walkable neighborhood with the critical mass of retail, restaurants, nightlife, and social activities that they truly prefer. Other markets have proven that a well-executed neighborhood providing these lifestyle amenities even in the absence of compelling lifestyle offerings, the downtown can still increasingly draw high income young professional residents. The subject site represents an opportunity to develop and deliver a mixed use neighborhood at the exact inflection point of downtown redevelopment.

As to the land owned by CBV, DoNo proposed mixed-use development , with ground floor shops and restaurants on Main Street, a large grocery store on the corner of Pleasant and North

Chapel, and 450 new apartments. In addition, a four-story residential building was planned for Pleasant and High Streets.

E. The Taking of the Property

On August 12, 2014, the City's Court of Common Council passed a resolution approving the purchase of CBV's property for $2.5 million. In October, 2014, changing his focus in light of developments, Mr. Yeatman proposed a sale to the City of that part of the CBV holdings that would give the City a whole block of land directly across from the ballpark ("A" on the attached diagram), reserving the other parcels ("B" and "C") to develop himself. The City rejected this offer, and on November 3, 2014, filed a Statement of Compensation for $1,980,000 to take all of CBV's property by eminent domain.

III. GOVERNING LAW

Article first, Section 11 of the Connecticut Constitution provides that "the property of no person shall be taken for public use, without just compensation therefor." Connecticut courts have stated that the issue of just compensation is one premised

in equitable considerations, rather than strictly legal or technical ones, with the law focused on placing the owner of condemned property in as good a condition pecuniarily as he or she would have been had the condemnation not occurred. *Northeast Ct. Economic Alliance, Inc., et al v. ATC Partnership, et al,* 256 Conn. 813, 828 (2001); *Colaluca v. Ives,* 150 Conn. 521, 530 (1963).

The role of the court in an eminent domain assessment case is to make an independent determination of value and fair compensation in light of all of the circumstances, the evidence, and the court's general knowledge of the premises, with an eye toward ensuring that the landowner is given, as nearly as possible, a fair, just and equivalent amount of money for the property's value. *Feigenbaum v. Waterbury,* 20 Conn. App. 148, 153-54 (1980). Valuation is a matter of fact and, in determining the fair market value, the court is to exercise its independent judgment and to select the method of valuation most appropriate to the case before it. *Laurel, Inc. v. Commissioner of*

Transportation, **180 Conn. 11, 37-38 (1980);** ***Pandolphe's Auto Parts, Inc. v. Manchester,*** **181 Conn. 217, 221 (1980).**

The purpose of the entry of expert testimony in a condemnation assessment case is to provide aid to the trier of fact to arrive at his or her own conclusion as to the value of the property. The court must weigh the expert opinions in light of all of the circumstances in evidence bearing upon the value, and the weight to be given to each, all measured by the trier's own general knowledge of the applicable elements but, as always, the trier of fact must avoid conclusions which result from speculation or conjecture. ***Commissioner of Transportation v. Towpath Associates,*** **225 Conn. 529, 554 (2001).**

The value for the taking of property by the process of eminent domain is to be measured as of the date of the taking. ***Textron, Inc. v. Commissioner of Transportation,*** **176 Conn. 264, 266 (1978). In this case the date of the taking is December 9, 2014.**

Because CBV comes to this court challenging the City's eminent domain assessment as inadequate, the property owner

bears the burden of proof as to its claim. *Levine v. Stamford,* 174 Conn. 234, 235 (1978).

The law provides that the court may rely on expert testimony in eminent domain matters, but the court must ultimately make its own independent determination of fair compensation on the basis of all of the circumstances relating to the property's value. *French v. Clinton*, 215 Conn. 197, 202-203 (1990).

Just compensation for property taken by eminent domain is the market value of the property when put to its highest and best use at the time of the taking, and fair market value is the price that a willing buyer would pay to a willing seller. *Commissioner of Transportation v. Towpath Associates,* supra., 255 Conn. 541. In determining the highest and best use, the trier of fact must consider whether there was a reasonable probability that in the reasonably near future the property would be put to that use. Id., 540. "The paramount law intends that the condemnee shall be put in as good condition pecuniarily by just compensation as he would have been in had the property not been taken." Id., quoting

Alemany v. Commisioner of Transportation, **215 Conn. 437, 444 (1990).**

The value of property is to be measured, not by the value to the condemnor but by the loss to the condemnee. *Grayline Bus Company v. Greater Bridgeport Transit District*, 188 Conn. 417, 427 (1982). Connecticut courts have made it clear that the value of property can be premised on the use to which the property could be put most advantageously at the time of the taking. *Commissioner of Transportation v. Towpath*, supra, 255 Conn. 544. Finally, the doctrine of assemblage applies in condemnation proceedings when the prospective use may be properly considered in fixing value of the condemned property if joinder of the properties is reasonably practicable. Id., 548.

IV. APPRAISALS

Each of the parties presented two appraisals to the court, and all four of the appraisers used "comparable sales." It should be noted, however, that, as with all appraisals of real estate, each of the appraisers made adjustments for each piece of

property evaluated, depending upon what each appraiser considered a plus or a minus of the property.

Arnold Grant of Arnold J. Grant Associates, Inc. (hereinafter "Grant"), has twice appraised the subject property. In January, 2013, Mr. Grant arrived at a value, as of January 5, 2013, in the range of $1,040,000 to $1,300,000, with a single point estimate value of $1,170,000. In his later appraisal, Mr. Grant opined the value as of December 9, 2014, to be $2,010,000.

Rocco Quaresima of FRQ Property Advisors, LLC (hereinafter "Quaresima") also has prepared two appraisals of the subject property. As of June 13, 2013, Mr. Quaresima arrived at a value of $1,900,000. In his June, 2015 report, valuing the property as of the taking date of December 9, 2014, Mr. Quaresima arrived at the same conclusion - $1,900,000.

In their appraisal of the property, Robert and Susan Mulready of J.F. Mulready Company, LLC (hereinafter "Mulready") opined that, as of the date of the taking, the property's value was $5,220,000.

The appraisal submitted by Richard A. Michaud and Robert G. Reicher, Jr. of the Michaud Company (hereinafter "Michaud") valued the subject property as of the date of taking at $4,810,000.

V. DISCUSSION

The Mulready report recounts much of the post late 1990s' development south of I-84 and provides an enthusiastic opinion about the development of the area surrounding the new ballpark based on the southern Hartford improvements. Mr. Mulready has a clearl optimism for the future of the city.

Mr. Mulready, in addressing the request made of him, engaged in research on the effect that ballparks had on land values in three other cities, namely, Greensboro, North Carolina; Winston Salem, North Carolina; and Fort Wayne, Indiana. He found that the construction of a minor league baseball stadium in each of these cities had a positive impact on the development of the surrounding area, and he opined that similar good fortune

would grace the northern part of downtown Hartford. Unfortunately, the research on success of stadiums to redevelopment projects does not support the singularly successful picture that Mr. Mulready has projected.

Mr. Mulready presented as an individual who strongly believes in, and supports, Hartford and its prospects. In his testimony, he dwelt on all of the improvements on the southern side of I-84, but neglected to recognize any of the continuing difficulties of the city, including the facts that many retail spaces are empty and have remained so for some time and that the available residential and office market remains less than saturated. Mr. Mulready's approach, although admirable, is much too enthusiastic for this court to rely upon his suggested appraisal of the subject property.

In his appraisal, Mr. Grant describes the sale of the LAZ property as one in which the City was willing to pay above market price. As to the Ugly building lot, Mr. Grant did not include demolition or remediation costs. The inclusion of 555 Capital Avenue as a "comparable" is surprising in that it is just

about completely across from downdown and is partly under a highway.

In early June, 2013, Mr. Quaresima made his first appraisal of the subject property, long before the announcement of a ballpark. According to Mr. Quaresima, his second valuation is an "as-is" appraisal. In addition, although different comparables were used for each of his reports, Mr. Quaresima reaches the same conclusion in his second report for the December 9, 2014 value of the property as he did for the June 10, 2013 value of the property. The first valuation was issued before an RFP was issued, before the ballpark was announced, and before DoNo submitted a development proposal accepted by the City. Even after all of these developments, the Mr. Quaresima's evaluation remained the same.

Both of the initial appraisals by Grant and Quaresima were made long before the announcement of a minor league ballpark across the street from the subject property. The value appraised by Mr. Quaresima before and after the announcement of the ballpark was identical. The appraised value by Mr. Grant

before and after the announcement of the ballpark was very similar.

The most astounding shortcoming of both of the City's appraising experts is that neither of them took into account the announcement of the ballpark, despite the facts that: their previous appraisals did not include the consideration of the major change of the construction of a ballpark; the ballpark proposed as of July, 2014, was directly across the street from two parcels of the subject property, with "beachfront" exposure on Main and Pleasant Streets; the City had already recognized the significant potential of the entire area in its invitation for proposals in the RFP; and, both DoNo and its market study expert had expressed enthusiastic expectations for the development of the entire area. DoNo had procured commitments from investors to build and run a grocery store, a necessity for a residential area, as well as for a brewery, with rooftop clientele access that one would expect to attract patrons. The operation of the ballpark would provide the area with attendees for seventy-two

games per year and the stadium would also afford an opportunity for booking concerts at other times.

The most persuasive appraisal presented to this court is that of the Michaud group. It rejects the approach of regarding this parking lot space "as-is" because that approach does not meet the required test of "highest and best use" of the property. It notes that the power of eminent domain entrusted to the City puts the City in a better negotiating position than potentially competing buyers and reflects on the City's ability to purchase some of the properties used by other appraisers for less than otherwise might be the case. There is considerable merit in the Michaud description of eminent domain as a "cloud" that dissuades competitive buyers and which has a negative impact on value, bringing down prices and driving away other potential purchasers. Such was clearly the case in the area north of I-84.

In addition, the Michaud reports points out that other properties on which the City's experts relied were vulnerable financially for other reasons. For example, research on the Rensselaer property used by the City's appraisers revealed that

the school's enrollment had decreased significantly by the time it was taken by the City and the seller was eager to sell. In addition, the seller had not been using the land and had no need to retain it.

The Michaud report relies on the concept of "assemblage," contemplating that the LAZ property and the Ugly property would be joined with the Main Street exposure of the subject property. Indeed, that is exactly the basis on which Dono premised its proposal. CBV could have made this assemblage, but was not afforded the opportunity to do so. The Michaud analysis concludes that it was reasonably probable that the property would be assembled, and if the City did not take the parcel, the market would respond. CBV could have developed this property. CBV could have developed Parcels B and C, with the city obtaining A. CBV could have purchased the LAZ and Ugly lots. One of the things that the Mulready findings underscores is that this scenario is exactly what occurred in the three cities studied by Mulready.

The history of the City's taking of the two properties adjoining Parcel "A" of the subject property is enlightening for purposes of this court's evaluation and presents a basis for valuing the property even without application of the assemblage doctrine. In 2010, the City purchased the Ugly parcel of real estate for $625,000 and spent another $600,000 to demolish and remove the building from that property. The per-square-foot price was $42.37. Using that figure, the value of the CBV property would have been $5,339,933 and that is before the announcement of the ballpark. In 2012, the City took the LAZ parcel, which did not have Main Street access, and was surrounded on three sides by the CBV parcel "A." The per-square-foot price was $25.75. Using that figure, the value of the CBV property would have been $3,245,298. Again, this would be a value before the announcement of the ballpark.

VI. CONCLUSION

Having considered all of the evidence presented to this court, and having considered all of the applicable law, this court

concludes the fair market value of the subject property, taken by the City of Hartford, is $4,810,000 as of December 9, 2014.

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Epstein, J.