****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

****

KOHL'S DEPARTMENT STORES, INC. *v.* TOWN OF ROCKY HILL (AC 45303)

Bright, C. J., and Prescott and Elgo, Js.

Syllabus

The plaintiff appealed to the Superior Court from four years of assessments of its personal property by the Board of Assessment Appeals for the defendant town. The personal property consisted of, inter alia, retail fixtures located at the plaintiff's store in the town. At trial, the town objected to the admission of the conclusions of value in the testimony and appraisal reports of the plaintiff's expert, K, claiming that they were speculative, unreliable, and inadmissible. The trial court overruled the objection, and K testified and presented evidence as to the valuation studies he performed on the plaintiff's fixtures. He also testified regarding the method he used to calculate the true and actual value of the plaintiff's property. In response, the town presented the testimony of its assessor, who indicated that he had valued the property by applying the uniform depreciation schedule set forth in the applicable statute (§ 12-63 (b) (6)) to the original acquisition costs. The town also presented its own expert, who testified regarding the purpose and implementation of the depreciation schedule. The trial court found that the plaintiff was aggrieved and that the town's valuation should be adjusted. It determined the true and actual values of the fixtures after depreciation by applying a 20 percent upward adjustment to K's valuation. On the town's appeal to this court, *held*:

1. The town's claim that the trial court abused its discretion by admitting and relying on K's opinions as to the true and actual value of the plaintiff's property was not persuasive because the trial court reasonably could have concluded that K's opinions were not speculative and that any uncertainties in the essential facts on which they were predicated went to their weight and not to their admissibility:

   a. The town's argument that K's testimony and reports were speculative because K relied on a market sales approach when no market existed for the plaintiff's fixtures was unavailing: K testified extensively as to the existence of a used fixture market, and the town took his testimony out of context when it claimed that K had admitted at trial that there was no established market for the plaintiff's used fixtures; moreover, the town mischaracterized K's testimony with respect to the customization of the plaintiff's fixtures, as he never stated that the plaintiff's fixtures were so customized that they could not be sold in the used fixture market, he made clear that his references to the customization of the fixtures related only to their design elements, and he rejected the town's contention that there was no market for the plaintiff's fixtures; accordingly, the trial court reasonably could have understood K's testimony to be that the plaintiff's fixtures were not so customized that there was no market for them and that he did not believe that the level of customization of the fixtures affected their value.

   b. The town's argument that K's opinions of value were unreliable and inadmissible because they depended on flawed data was not persuasive: K testified that he used his best appraisal judgment to evaluate the range of resale prices provided to him by experienced and reliable used fixture dealers to produce a credible number for the value of the plaintiff's fixtures in the used fixture market for each applicable year, that his appraisal report was produced in accordance with professional standards and his valuation approach was approved by the largest multidisciplinary appraisal organization in the world, that, according to that organization, the best way to determine an overall depreciation factor was to determine what the used market was bearing for a particular asset, and that it was customary to interview used fixture dealers in making such a determination; moreover, given K's testimony and the fact that the town had the opportunity on cross-examination to challenge his reliance on such information, it was not an abuse of discretion for the trial court, as the sole arbiter of the credibility of witnesses, to find that the dealers K had

interviewed were sufficiently reliable, that the data stemming from such interviews was customarily relied on by experts in the personal property appraisal field, and that K had sufficient experience to evaluate the information; accordingly, the fact that K's depreciation factor utilized the dealers' asking prices did not render his opinions speculative or unreliable.

2. The trial court's findings that the plaintiff had established aggrievement by proving that the town's valuations were excessive and that K's values adjusted upward by 20 percent reflected the true and actual value of the plaintiff's property were not clearly erroneous because they were supported by the evidence in the record:

a. The town's claim that, assuming K's valuation opinions were admissible, they were not sufficient to prove aggrievement because they did not take into account the installation and transportation costs of the plaintiff's fixtures, as required by § 12-63 (b) (2), was not persuasive: although the trial court noted that it did not accept K's opinion in its entirety, in part because he failed to properly account for the costs of installation and transportation, it nonetheless found, on the basis of its evaluation of all of the evidence, that, even when properly accounting for such costs, the town's methodology overstated the value of the plaintiff's fixtures and needed to be adjusted; moreover, there was sufficient evidence in the record to support the trial court's finding, including K's explanation of why the town's application of the depreciation table set forth in § 12-63 (b) (6) did not result in the calculation of the true and actual value of the plaintiff's fixtures, K's opinion of the true and actual value of the fixtures, and K's thorough explanation of his methodology for concluding that the town's values were overstated; accordingly, it was reasonable for the trial court to conclude that the town's use of the § 12-63 (b) (6) uniform depreciation schedule did not appropriately factor in the economic obsolescence of the fixtures, thus overvaluing them, even after correcting K's opinion for deficiencies.

b. The town's argument that the trial court's findings of the true and actual value of the fixtures were clearly erroneous because its 20 percent increase in K's figures was arbitrary was not persuasive: a review of the record reveals that, in arriving at its conclusions as to the values of the fixtures, the trial court carefully weighed the opinions of the appraisers, the claims of the parties, and its own general knowledge of the elements relevant to establishing value and determined that, although K sufficiently demonstrated that the town had overvalued the plaintiff's property, his valuation method did not fully take into account certain matters as outlined by the town; moreover, the trial court was not required to specify the factors it considered in making its upward adjustment or to specify the valuation method it used, and its decision was not reviewable because the adjustment did not misapply, overlook, or give a wrong or improper effect to any test or consideration that the trial court had a duty to regard, rather, the court exercised its broad discretion in coming to an independent conclusion as to the value of the property; furthermore, in light of the disagreements between the expert appraisers, the trial court reasonably could have concluded that a compromise figure best reflected the true and actual value of the fixtures; additionally, the trial court was not required to make its adjustment with exacting precision, and this court could not say that the adjustment made did not represent at least a reasonable approximation of the value of the plaintiff's property.

Argued February 7—officially released May 23, 2023

Procedural History

Appeal from the decision of the defendant's Board of Assessment Appeals rejecting the valuation of certain of the plaintiff's personal property declarations, brought to the Superior Court in the judicial district of New Britain, Tax Session, where the appeal was tried to the court, *Hon. Henry S. Cohn*, judge trial referee; judgment for the plaintiff, from which the defendant appealed to this court. *Affirmed*.

Michael R. McPherson, with whom, on the brief, was *Morris R. Borea*, for the appellant (defendant).

Gregory F. Servodidio, with whom, on the brief, was *Michael J. Marafito*, for the appellee (plaintiff).

Opinion

BRIGHT, C. J. This appeal arises from a municipal tax appeal filed by the plaintiff, Kohl's Department Stores, Inc., pursuant to General Statutes § 12-117a,[1] against the defendant, the town of Rocky Hill (town), challenging its assessments of personal property located at 1899 Silas Deane Highway (store) for the years 2014, 2015, 2016, and 2017. The town appeals from the judgment of the trial court sustaining the plaintiff's appeal and ordering the reduction of the town's tax assessments levied against the plaintiff's personal property. The town claims that the court (1) abused its discretion by admitting into evidence the valuations of the plaintiff's expert appraiser and (2) made clearly erroneous findings that the plaintiff was aggrieved and as to the true and actual value of its personal property. We affirm the judgment of the trial court.

The present case returns to us following our remand in *Kohl's Dept. Stores, Inc.* v. *Rocky Hill*, 195 Conn. App. 831, 227 A.3d 1040, cert. denied, 335 Conn. 917, 230 A.3d 643 (2020). The following facts, as set forth by this court in the town's prior appeal, and procedural history are relevant to our resolution of this appeal. "As required by law,[2] the plaintiff prepared and filed personal property declarations with the town as of October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017, in which it declared the value of its retail fixtures, equipment, furniture, signage, and other items of personal property located in the store [fixtures]. Its declarations varied from the town's [determinations of values] with regard to the depreciation schedules used by each party to assess the value of the plaintiff's personal property.[3] The assessor rejected the plaintiff's valuation, as did the Rocky Hill Board of Assessment Appeals (board).[4] After the plaintiff's unsuccessful appeal to the board, it filed a complaint with the trial court, [challenging] the assessment[s] made by the assessor and the subsequent action of the board, pursuant to . . . [§] 12-117a . . . . In its complaint, the plaintiff asserted that the assessor improperly had overvalued and overassessed the true and actual value of its personal property located in its store. The dispute centered on the different depreciation schedules employed by the parties, which resulted in dissimilar values for each year in question.

"The personal property in dispute consisted of [fixtures] used by the plaintiff in its store to display merchandise. To value the [fixtures], the assessor utilized the depreciation schedule set forth in [General Statutes] § 12-63 (b) (6). The plaintiff, however, retained an outside appraisal company, Valcon Partners, Ltd. (Valcon). Douglas R. Krieser was an appraiser for Valcon. Krieser developed a depreciation schedule based on a study he conducted that related to the value of used retail [fixtures] . . . .

"The matter was tried to the court, *Hon. Arnold W. Aronson*, judge trial referee, on November 29 and 30, 2017. At trial, Krieser testified about his approach to the valuation of the [fixtures], in which he considered three components to be essential in the depreciation calculation: physical deterioration, functional obsolescence, and economic obsolescence. Krieser relied on information he had received from out-of-state fixture furniture dealers in the business of reselling used [fixtures]. He provided these dealers with a sample of the fixtures used in one of the plaintiff's typical stores and instructed them to use their experience and sales history and to consider relevant economic factors to estimate what the fixtures would sell for in a transaction between a typical buyer and seller. . . .

"In response, the town offered no evidence as to the value of the [fixtures]; rather, the assessor testified that he took the historic costs of the [fixtures], a calculation not in dispute, and applied to that cost the depreciation schedule set forth in § 12-63 (b) (6). Although he acknowledged that he was not aware if the town had enacted an ordinance adopting the statutory schedule, the assessor testified that, as a matter of fact, he assesses all personal property in the town in the same way, by taking the original cost of an asset and applying a uniform depreciation schedule to that asset.

"Following trial, the court issued its memorandum of decision sustaining the plaintiff's appeal. At the outset of its analysis, the court stated that, pursuant to § 12-63 (b) (2), the depreciation schedule set forth in § 12-63 (b) (6) can be used by a municipal assessor only if the municipality has, by ordinance, adopted the provisions of that section. The court found that the town had not adopted any such ordinance. . . . [O]n the basis of the Valcon evidence and the lack of any appraisal from the town, the court found that the plaintiff was aggrieved by the tax assessment[s]." (Footnotes added; footnotes in original; footnotes omitted.) Id., 834–37.

The town thereafter appealed to this court, claiming that the trial court's "refusal to consider the assessor's use of the statutory depreciation schedule was incorrect and that this legal determination likely influenced the court's finding of aggrievement and its ultimate determination of valuation." Id., 837. This court agreed and held that a municipal tax assessor may use the depreciation schedule provided in § 12-63 (b) (6) for purposes of assessing personal property even if the municipality has not adopted it by ordinance. Id., 841. Because the trial court did not consider the factual question of whether application of the statutory depreciation schedule resulted in a true and actual valuation of the plaintiff's fixtures, this court reversed the judgment and remanded the case for a new trial. Id., 841–43.

On remand, the town filed a motion in limine pursuant to Practice Book § 15-3, seeking to preclude the plaintiff from introducing into evidence at trial Krieser's opinions as to the value of the plaintiff's personal property. The town argued that Krieser had "impermissibly based his valuation on market values of used custom fixtures for which there is no market" and "relied on the speculative 'asking price' obtained from used furniture dealers who did not even consider the fixtures' custom features." Accordingly, the town claimed that Krieser's opinions as to the true and actual value of the property were speculative, unreliable, and inadmissible. The court, *Klau*, *J.*, denied the motion "without prejudice to the [town] raising the arguments set forth in the motion (regarding the speculative nature of the testimony) when the plaintiff's expert testifies."

A new trial took place on October 26 and 27, 2021. At the outset, the parties stipulated that the sole issue to be determined by the court was the present true and actual values[5] of the fixtures listed under category 16 of the plaintiff's declarations for the tax years 2014 through 2017. The parties also agreed that the plaintiff's original acquisition costs for the fixtures were not contested.

The plaintiff again presented Krieser as its expert witness to testify about his approach to the valuation of the plaintiff's fixtures and offered as evidence Krieser's appraisal reports that contained a summary of his valuation theory, process, and conclusions.[6] The town objected to the admission of Krieser's conclusions of value in both his testimony and appraisal reports, raising the same arguments as those made in its motion in limine. The court overruled the objection and admitted the testimony and reports. Krieser explained that he performed valuation studies of the plaintiff's fixtures for the relevant years and calculated the true and actual value of the property by creating a single percentage factor comprised of two elements: (1) a trend factor that appreciated the asset to reflect the present replacement cost; and (2) a depreciation factor based on market research to reflect the physical and economic obsolescence of the property over time. Krieser multiplied the two factors together to produce a combined factor that he applied to the original acquisition costs of the plaintiff's fixtures, as determined by the plaintiff's fixed asset records, to determine the relevant true and actual values of the fixtures for tax purposes.[7] In calculating the true and actual values of the fixtures, Krieser determined that the property was in "fair" condition, as opposed to "excellent," "good," or "poor" condition, which impacted the depreciation factor.

In response to Krieser's testimony and reports, the town presented the testimony of its assessor, Stuart Topliff, who recounted his valuation method in which he applied the uniform depreciation schedule set forth

in § 12-63 (b) (6) to the fixtures' original acquisition costs.[8] The town also presented Steven Kosofsky, an assessor for the town of Newington, as an expert witness. Kosofsky testified as to the condition of the fixtures at the time of appraisal, describing them as being in "good" condition in contrast to Krieser's classification of them as being in "fair" condition. Kosofsky also testified as to the purpose, function, development, and implementation of the depreciation schedule set forth in § 12-63 (b) (6). In addition, the town introduced digital photographs of the plaintiff's fixtures that Kosofsky had taken in 2016.

On February 3, 2022, the court, *Hon. Henry S. Cohn*, judge trial referee, sustained the plaintiff's appeal pursuant to § 12-117a. On the basis of the evidence presented, the court found that the plaintiff was aggrieved and that the town's valuation should be adjusted. The court thereafter set forth its conclusions as to the true and actual values of the fixtures as installed.[9] The court declined to adopt fully Krieser's valuation conclusions because it found that (1) the photographic evidence supported a conclusion that the fixtures were in "good" rather than "fair" condition, (2) Krieser relied too heavily on values set by used fixture dealers, and (3) Krieser had not fully considered transportation and installation costs in his valuation as required by § 12-63 (b) (2). Accordingly, "[b]ased on [its] review of the record, the court [made] an [upward] adjustment of 20 percent to Krieser's valuation." The court thus found the following true and actual values after depreciation for the fixtures: $500,403.82 for 2014; $578,231.96 for 2015; $574,919.71 for 2016; and $489,440.75 for 2017.

The town filed the present appeal on February 14, 2022. On February 24, 2022, the town filed a motion for articulation, requesting that the court state the legal and factual bases for the court's (1) order at trial overruling the town's objection to Krieser's opinions of value and (2) findings of true and actual value in its memorandum of decision. The trial court granted that motion and issued an articulation, in which it stated that it overruled the town's objection to Krieser's valuation because the court "concluded that [Krieser] was qualified, that his testimony was reliable, not speculative, and that it would be of assistance to the court." The court further explained that, in determining the present true and actual value of the property, "[t]he court relied on the plaintiff's expert testimony, concluding that the town's formula in this instance was too limiting in finding true value. . . . The court did not completely rely on the plaintiff's value, however.

"As the . . . town has acknowledged in its motion for articulation, the court determined that the plaintiff's expert's opinion on depreciation did not fully take into account certain matters as outlined by the [town]. . . . The court relied on the record as developed at trial to

establish [value] adjusting the plaintiff's value by 20 percent." (Citations omitted.) Finally, the court clarified that "[t]he basis for [its] proceeding to [true and actual] value is because [it] held that the record established that the plaintiff had proven aggrievement. The [town's] value was excessive, thus allowing for a finding of aggrievement." Additional facts will be set forth as necessary.

I

On appeal, the town first claims that the court abused its discretion by admitting Krieser's opinions as to the true and actual value of the plaintiff's property. In particular, the town argues that Krieser's testimony and appraisal reports were inadmissible "because they lack a sufficient basis in fact." (Emphasis omitted.) Specifically, the town argues that (1) Krieser's appraisal was based on the resale value of the plaintiff's fixtures when no market for those fixtures existed and (2) Krieser relied on unsupported and speculative information in arriving at the resale values of the fixtures. We are not persuaded by either argument.

We begin with our standard of review. "We review a trial court's decision [regarding the admission of] expert testimony for an abuse of discretion. . . . We afford our trial courts wide discretion in determining whether to admit expert testimony and, unless the trial court's decision is unreasonable, made on untenable grounds . . . or involves a clear misconception of the law, we will not disturb its decision. . . . To the extent the trial court makes factual findings to support its decision, we will accept those findings unless they are clearly improper." (Internal quotation marks omitted.) *Dept. of Social Services* v. *Freeman*, 197 Conn. App. 281, 289–90, 232 A.3d 27, cert. denied, 335 Conn. 922, 233 A.3d 1090 (2020). "Under [an abuse of discretion] standard, we must make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Internal quotation marks omitted.) *King* v. *Hubbard*, 217 Conn. App. 191, 201–202, 288 A.3d 218 (2023).

"Expert testimony should be admitted when: (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues. . . . An expert may testify in the form of an opinion and give reasons therefor, *provided sufficient facts are shown as the foundation for the expert's opinion*. . . . Thus, [t]o render an expert opinion the witness must be qualified to do so and there must be a factual basis for the opinion. . . . Accordingly, this court has stated, [t]he essential facts on which an expert

opinion is based are an important consideration in determining the admissibility of the expert's opinion. . . .

"In a case in which the factual basis of an [expert witness'] opinion is challenged the question before the court is whether the uncertainties in the essential facts on which the opinion is predicated are such as to make an opinion based on them without substantial value. . . . For example, this court has determined that the opinions of a purported expert witness, whose testimony was based on speculation and who lack[ed] [sufficient] personal knowledge . . . of the facts on which he based his opinions . . . were without substantial value." (Citations omitted; emphasis altered; internal quotation marks omitted.) *Gianetti* v. *Neigher*, 214 Conn. App. 394, 440, 280 A.3d 555, cert. denied, 345 Conn. 963, 285 A.3d 390 (2022).

The following additional facts are relevant to this claim. At trial, Krieser testified as to his background and qualifications, stating that he has more than three decades of experience as an appraiser; owns the appraisal firm Valcon; is a member of the American Society of Appraisers—in which he has served in various positions such as President and Chairman of the Board of Governors; and has taken numerous professional development courses through the American Society of Appraisers[10] and the Royal Institute of Chartered Surveyors.[11] In light of this experience, the town conceded at trial that Krieser was qualified to testify as an expert in personal property appraisals.

Krieser thereafter described the various steps he took in preparation of the appraisals, including inspecting the fixtures in person, conducting in-depth market research on retail fixtures, and obtaining the fixed asset records of the fixtures at the store that detailed the original acquisition costs of the fixtures—including cost of installation, transportation, and engineering. On the basis of his investigation, Krieser designed a combined cost approach[12] and market data approach[13] to calculate the true and actual values of the plaintiff's fixtures. Specifically, Krieser created a combined factor comprised of two elements: (1) a trend factor that appreciated the property to reflect the present replacement cost and (2) a depreciation factor, based in part on a market data approach, to reflect the physical and economic obsolescence of the property over time. Krieser then applied the combined factor to the original acquisition cost of the fixtures to calculate their true and actual value.

In calculating the trend factor, Krieser first determined the original acquisition costs of the plaintiff's fixtures as reported in the plaintiff's fixed asset records. Krieser then consulted information available through the Bureau of Labor Statistics to determine the replacement cost of the plaintiff's fixtures. From those two

values he calculated a percentage by which the property had increased in value over time.

In calculating the depreciation factor, Krieser stated that there are "three types of depreciation that we have to take into account. First is physical deterioration . . . that really has to do with wear and tear on the asset itself. The second one is functional obsolescence which has to do with a cause or an obsolescence that's inherent to the object itself. . . . Then there's economic obsolescence which is a driver from the outside of value. . . . So, what I needed to do is . . . figure out how to incorporate all three of those factors into my valuation. . . . [T]he way that I chose to incorporate all three of those into one factor was to develop a market based depreciation curve."

To create that curve, Krieser consulted several companies operating as used fixture dealers that he deemed credible and reliable. Krieser provided the dealers with diagrams of the fixtures available at the plaintiff's store, information on what materials they were made of, and their particular functions. Krieser requested that the dealers focus on the functionality of a given fixture, rather than on its design elements. The dealers then provided Krieser with the prices that they would sell the fixtures for if the fixtures were in excellent, good, fair, or poor condition. Krieser used the prices in conjunction with other market research data to develop the depreciation factor—the percentage by which a given fixture depreciates in value over time. Krieser acknowledged that the dealers did not provide him with comparable sales information for the plaintiff's fixtures, nor was Krieser aware of how exactly the dealers derived their asking prices.

Krieser then multiplied the trend factor and the depreciation factor together to come up with the combined factor that he applied to the fixtures' original acquisition costs, as documented in the plaintiff's fixed asset records, to calculate the present true and actual values of the plaintiff's fixtures. A combined factor was determined for each valuation year as well as for each year going back to 2005, the year the fixtures were first purchased, as the trend and depreciation factors differed from year to year.

A

The town first argues that Krieser's testimony as to his opinions of value and his valuation reports were speculative because he "relied on a market sales approach where *no* market exists" for the plaintiff's fixtures. (Emphasis in original.) In particular, the town argues that "Krieser admitted at trial that there is no established market for [the plaintiff's] used fixtures," and, accordingly, that "Krieser's 'combined' depreciation factor hinges on a fictitious 'market' sales analysis of [the plaintiff's] used custom fixtures for which no

market exists." On the basis of our review of the record, we conclude that the town's argument fails.

At the outset we note that Krieser testified extensively to the existence of a used fixture market. For example, in recounting what steps he took to prepare for his appraisal of the plaintiff's property, Krieser stated that he interviewed several used fixture dealers who owned companies that regularly purchased and sold used retail fixtures. Krieser also testified at length about the impact that the Great Recession had on the retail marketplace, stating that "one of the key drivers of the value of a store fixture and, again, when I use the word 'fixture,' I'm not talking about a light fixture or a plumbing fixture or something, we're talking about a display fixture for the retail marketplace. [In 2008], [t]here [were] so many store closings that the used fixture market was flooded with used [fixtures] and . . . at the same time that the fixture market was flooded with used fixtures, the purchasers of the used fixtures . . . were dwindling."

Moreover, the town takes Krieser's testimony out of context in claiming that "Krieser admitted at trial that there is no established market for [the plaintiff's] used fixtures." Specifically, the town points to the following exchanges on cross-examination between its counsel and Krieser:

"Q. . . . As far as you know, no major retailer buys used fixtures. Isn't that right?

"A. No major retailer today purchases used fixtures. That is a correct statement.

"Q. All right. And the used market for custom fixtures, like we're talking about here, the [plaintiff's] types of fixtures, the used market for custom fixtures is zero. Isn't that right?

"A. When we're talking, again, about customized fixtures, we're talking about the way that asset looks, the colorization and maybe the shape of the asset and, again, you got to remember what was going on at the time frame that we're discussing here back in 2014 to 2017, the entire market for used fixtures was severely depressed and I was told by the dealers that the more standardized a fixture is, the more chance of it actually selling in the used marketplace.

"So, for example, a gondola rack, which is something that you see at every convenience store and a lot of supermarkets, that's as basic as you get and those were selling pretty well throughout the process, now they sold for less money, but they actually sold.

* * *

"Q. And—all right. Now, didn't you testify at the first trial that the used market for custom fixtures was zero?

"A. The used market for a fixture that is so customized

that it cannot be used for anything other than a particular product in a particular store is likely nothing or very minimal, that is true."

On the basis of these exchanges, the town argues that, although there may be a market for standard used fixtures, Krieser acknowledged the lack of one for customized fixtures, while also acknowledging that the plaintiff's fixtures were customized. Thus, according to the town, Krieser based his appraisals on a market he admitted does not exist.

The town, however, mischaracterizes Krieser's testimony with respect to the customization of the plaintiff's fixtures. At no point in his testimony did Krieser state that the plaintiff's fixtures are so customized that they could not be sold in the used fixture market. Krieser expressly stated that when he discusses the customized aspects of the plaintiff's fixtures, he is referencing their design elements and not their functionality. For example, Krieser testified that, "[w]hen we're talking . . . about customized fixtures, we're talking about the way that the asset looks, the colorization and maybe the shape of the asset . . . ." In addition, the following exchange between the plaintiff's counsel and Krieser on direct examination makes clear that Krieser's references to customization relate only to the design elements of a given fixture:

"Q. How did this notion of customized fixtures play into your [market based] analysis?

"A. So, every particular—every store, whether it's a [plaintiff's store] or a JCPenney or a Macy's or some other retail store, has a particular look when you go into the store and that look could be the color of the panels on the cabinets, whether the rack has, you know, chrome or whether it's flat colored or however that is. . . . So when I was talking to the dealers, I wanted them to look at the configuration of the fixtures so they knew kind of what kind of fixtures we're talking about, but I asked them to look at the functionality of what the rack—what the fixture does and what they felt that [the fixture] would be worth in the used marketplace if they had that sitting on their showroom floor.

"Q. I see. And, therefore, the information you got back from the dealers reflected their consideration of the [the plaintiff's fixtures] but maybe not the—all of the design elements or colors or things of that nature. . . .

"A. That is correct. So, we looked at what the functionality was, whether the—whether the, you know, the color of the panel was oak or maple or clear. That was the kind of customization we asked them to kind of put to the side and say well, it's a—it's a rack that could be used for hanging or folding, it's a shoe display. You know, every store has a shoe display, every store has a display that displays jewelry, so take a look at it from that standpoint of what would a cabinet like that go

for in your store if you had that for sale."

Further, the following colloquy between the town's counsel and Krieser demonstrates that Krieser rejected the town's contention that there is no market for the plaintiff's fixtures:

"Q. So you'd agree, there really is no market for custom fixtures.

"A. [There is] a market for [fixtures] and the more customized a fixture is, the less likely it is going to sell in the marketplace. . . .

"Q. And when you provided the information to the used furniture—the used fixture dealers, you told them to disregard the custom features, did you not?

"A. In that comment of disregard the custom features, what I was implying to them and what we discussed was looking at the functionality of those, whether it is a rack for hanging clothes, whether it is a rack for putting clothes on a shelf, whether it is a jewelry display case, to look at the functionality of that asset, not so much that it was white versus beige or oak versus maple, just to look at the specifics and what the functionality was and to look at it from that standpoint.

"Q. All right. And so, these used furniture—these used fixture dealers that have no experience selling custom fixtures, the only experience they have is selling used fixtures. In other words, they didn't have any sales for the custom ones, right, and they had no experience selling them, right?

"A. I wouldn't know that. Every—every store has its own look and its own feel and some customization and so the fixture market is very broad and the fixture market itself has a lot of variabilities. So, I cannot say with any certainty that they have never sold a customized fixture because to an extent, almost all [fixtures are] somewhat customized."

Taken as a whole, the court reasonably could have understood Krieser's testimony to be that the plaintiff's fixtures were not so customized that there was no market for them. Rather, he requested the fixture resellers to focus on the function of the fixtures and not the superficial customized characteristics such as color or finish when determining their resale values. The court also reasonably could have understood Krieser's testimony to be that all used fixtures have some degree of customization because every store has its own look, and he did not believe that that level of customization affected the value of the fixtures.

It is axiomatic that, "[i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] rea-

sonably believes to be credible. . . . On appeal, we do not retry the facts or pass on the credibility of witnesses." (Internal quotation marks omitted.) *Nutmeg Housing Development Corp.* v. *Colchester*, 324 Conn. 1, 10, 151 A.3d 358 (2016). Considering Krieser's entire testimony, we conclude that the court did not abuse its discretion in admitting his testimony and reports and basing its valuation of the plaintiff's fixtures on Krieser's combined cost and market based approach.

B

The town also argues that Krieser's "opinions of value are unreliable and, thus, inadmissible because they *depend* on flawed data, i.e., the fabricated sale prices for used custom fixtures." (Emphasis in original.) In particular, the town argues that the used fixture dealers that Krieser relied on to calculate his depreciation factor "arbitrar[ily]" based their sales price opinions on "nothing more than their personal expertise." The town thus contends that "Krieser relied on speculative opinions of market value that lacked any basis in an 'assuredly reliable methodology' other than personal expertise or 'ipse dixit' (i.e., 'an assertion made but not proved'). *Klein* v. *Norwalk Hospital*, 299 Conn. 241, 263, [9 A.3d 364] (2010) ['[w]ithout . . . meaningful indicia of reliability, [the expert's] conclusion was without basis in an assuredly reliable methodology; without any stated support for its reliability other than his own personal expertise, it was nothing more than his ipse dixit']."[14] According to the town, "[b]ecause the [used fixture] dealers' asking prices are themselves unreliable and speculative, they render unreliable Krieser's so-called 'combined factor' and his entire valuation" such that his testimony and report regarding valuation were inadmissible. We are not persuaded.

It is well established that "[t]he opinions of experts must be based upon facts which have been proved, assumed, or observed, and which are sufficient to form a basis for an intelligent opinion. . . . Opinion evidence should be accompanied by a statement of the facts on which it is based, and as a general rule, an expert must state facts from which the [fact finder] may draw [its] conclusions. Conversely, a witness qualified as an expert may not only testify as to the conclusions based upon his skill and knowledge, but also as to the facts from which such conclusions are drawn. . . . [W]here the factual foundation for an expert opinion is not fully disclosed, it cannot be assailed upon appeal if accepted by the [fact finder] as sufficient in weight and credibility to support the verdict. . . .

"The fact that an expert opinion is drawn from sources not in themselves admissible does not render the opinion inadmissible, provided the sources are fairly reliable and the witness has sufficient experience to evaluate the information. . . . This is so because of the sanction given by the witness's experience and

expertise. . . . An expert may give an opinion based on sources not in themselves admissible in evidence, provided (1) the facts or data not in evidence are of a type reasonably relied on by experts in the particular field, and (2) the expert is available for cross-examination concerning his or her opinion." (Internal quotation marks omitted.) *Birkhamshaw* v. *Socha*, 156 Conn. App. 453, 483–84, 115 A.3d 1, cert. denied, 317 Conn. 913, 116 A.3d 812 (2015); see also *DiNapoli* v. *Regenstein*, 175 Conn. App. 383, 393–94, 167 A.3d 1041 (2017). Moreover, "an expert's opinion is not rendered inadmissible merely because the opinion is based on inadmissible hearsay, so long as the opinion is based on trustworthy information and the expert had sufficient experience to evaluate that information so as to come to a conclusion which the trial court might well hold worthy of consideration . . . ." (Internal quotation marks omitted.) *Birkhamshaw* v. *Socha*, supra, 485.

In the present case, Krieser testified that the dealers he interviewed owned companies that "purchased and sold used [fixtures] on a daily basis and that was their sole business." He further testified that the dealers, based on their multiple years of experience, the fixtures they had sold in the past, and the function of the plaintiff's fixtures, provided him with a range of asking prices for which they would sell the plaintiff's fixtures to various retail establishments. Krieser then used his "best appraisal judgment" to evaluate the dealers' responses and produced a "credible number" for the value of the fixture in the used fixture marketplace for each year. The town cross-examined Krieser at length concerning the dealers and their asking prices on which Krieser relied. Any weaknesses that such questions may have exposed in Krieser's testimony were fodder for the court's consideration in evaluating his testimony. See, e.g., *Banco Popular North America* v. *du'Glace, LLC*, 146 Conn. App. 651, 660, 79 A.3d 123 (2013) (irregularities within expert appraiser's valuation methodology that were deemed fodder for cross-examination, went to weight, not admissibility, of appraisal report and expert's testimony).

Significantly, Krieser testified that his appraisal report was produced pursuant to the Uniform Standards of Professional Appraisal Practice and that his valuation approach was approved by the American Society of Appraisers. Krieser also testified that, according to the American Society of Appraisers, the best way to determine an aggregate obsolescence factor—and, thus, an overall depreciation factor—is to determine what the used market is bearing for a particular asset.[15] Krieser expressly testified that interviewing dealers is a customary method appraisers use to establish what the market is bearing for a certain asset: "[U]nlike real estate valuation where you've got a really good public database of information for sales, you don't have that for personal property. So . . . one of the processes we use are what

we call dealer opinions of value and that is, again, something that is taught by the American Society of Appraisers as a credible and a good appraisal practice to use for valuing assets like this." Notably, the town did not present any evidence contradicting Krieser's statement that interviewing dealers is a customary practice in the valuation of personal property.

Furthermore, Krieser testified that "[a]ll of the dealers that [he] used had significant experience in buying and selling used [fixtures]" and that he "deemed these dealers to be credible and reliable for several reasons. First of all, when we started this process with [the plaintiff] back in 2009, 2010, one of the first things I did was I discussed with another appraiser, who was much more my senior [and] had done a lot of work in the retail world, who[m] they used for their sources, and all three of these sources were sources that they had used in the past and that they had deemed credible and so, therefore, I took that as one indication that they were credible.

"The second thing that I did is I did have a discussion with each one of them about their experience, how many years they've been in business, you know, what kind of shop they had, that kind of thing and from those discussions and the fact that they became recommended from a very experienced appraiser friend of mine that they were credible and reliable sources and that they did know the market very well."

Given this testimony, and the fact that the town had the opportunity on cross-examination to challenge Krieser's reliance on such information, it was not an abuse of discretion for the court, as the sole arbiter of the credibility of the witnesses; see *Nutmeg Housing Development Corp.* v. *Colchester*, supra, 324 Conn. 10; to find that (1) the dealers were sufficiently reliable, (2) data stemming from interviews with such dealers is customarily relied on by experts in the personal property appraisal field, and (3) Krieser had sufficient experience to evaluate the information. Accordingly, the fact that Krieser's depreciation factor utilized the dealers' asking prices does not render his opinion speculative and inadmissible. See *Digital 60 & 80 Merritt, LLC* v. *Board of Assessment Appeals*, 211 Conn. App. 559, 604, 274 A.3d 952 (noting that valuation "is a matter of opinion based on all the evidence and, at best, is one of approximation" (internal quotation marks omitted)), cert. denied, 343 Conn. 926, 275 A.3d 1212 (2022).

For the foregoing reasons, we conclude that the court did not abuse its discretion by admitting and relying on Krieser's valuation opinions because it reasonably could conclude that those opinions were not speculative or unreliable and that any uncertainties in the essential facts on which Krieser's opinions were predicated went to the weight and not the admissibility of those opinions.

II

The town next claims that the court made clearly erroneous findings that (1) the plaintiff established aggrievement by proving that the town's valuations were excessive and (2) Krieser's values adjusted upward by 20 percent reflected the true and actual value of the plaintiff's property. The plaintiff disagrees and argues that the court's valuations were not clearly erroneous as they are supported by the evidence in the record. We agree with the plaintiff.

As discussed previously in this opinion, the plaintiff brought its tax appeal pursuant to § 12-117a, "which allows taxpayers to appeal the decisions of municipal boards of [assessment appeals] to the Superior Court [and] provide[s] a method by which an owner of property may directly call in question the valuation placed by assessors upon his property. . . . In a § 12-117a appeal, the trial court performs a two step function. The burden, in the first instance, is upon the plaintiff to show that he has, in fact, been aggrieved by the action of the board in that his property has been overassessed. . . . In this regard, [m]ere overvaluation is sufficient to justify redress under [§ 12-117a], and the court is not limited to a review of whether an assessment has been unreasonable or discriminatory or has resulted in substantial overvaluation. . . . Whether a property has been overvalued for tax assessment purposes is a question of fact for the trier. . . . The trier arrives at his own conclusions as to the value of land by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value including his own view of the property. . . .

"Only after the court determines that the taxpayer has met his burden of proving that the assessor's valuation was excessive and that the refusal of the board of [assessment appeals] to alter the assessment was improper, however, may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains . . . . If a taxpayer is found to be aggrieved by the decision of the board of [assessment appeals], the court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the applicant's property." (Internal quotation marks omitted.) *Walgreen Eastern Co.* v. *West Hartford*, 329 Conn. 484, 491–92, 187 A.3d 388 (2018).

"We are bound by the trial court's findings of fact unless those findings are clearly erroneous, but we invoke a plenary review of any legal conclusions. We must, therefore, decide whether the conclusions are legally and logically correct, and find support in the record." (Internal quotation marks omitted.) *Kohl's*

Dept. Stores, Inc. v. *Rocky Hill*, supra, 195 Conn. App. 837.

A

The town first claims that, assuming that Krieser's valuation opinions were admissible, they were not sufficient to prove aggrievement because they did not take into account the installation and transportation costs of the plaintiff's fixtures, as required by § 12-63 (b) (2). The town contends that "[t]his deficiency . . . was not a mere issue of credibility to be weighed but, rather, an outright failure of proof. . . . Thus, even if Krieser's opinions were admissible . . . they could not prove aggrievement. The trial court should not have gone any further to 'correct' the town's values. See [*Kohl's Dept. Stores, Inc.* v. *Rocky Hill*, supra, 195 Conn. App. 838] (stating that, if plaintiff fails to prove overvaluation, 'the trial proceeds no further, and the town's assessment stands')." (Emphasis omitted.) We are not persuaded.

"In a tax appeal taken from the trial court to the Appellate Court or to [our Supreme Court], the question of overvaluation usually is a factual one subject to the clearly erroneous standard of review. . . . Under this deferential standard, [w]e do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. Rather, we focus on the conclusion of the trial court, as well as the method by which it arrived at that conclusion, to determine whether it is legally correct and factually supported. . . . Additionally, [i]t is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . . On appeal, we do not retry the facts or pass on the credibility of witnesses. . . . Simply put, a trial court is afforded wide discretion in making factual findings . . . ." (Internal quotation marks omitted.) *Walgreen Eastern Co.* v. *West Hartford*, supra, 329 Conn. 493.

In the present case, the court "relied on [Krieser's] expert testimony, concluding that the town's formula in this instance was too limiting in finding true value." Accordingly, it found that the plaintiff had "made a prima facie case that the town's valuation should be adjusted" and "that the analysis of . . . Krieser demonstrate[d] that the town's valuation is in need of adjustment." Although the court noted that it was not accepting Krieser's opinion in its entirety, in part because he failed to properly account for the costs of installation and transportation, it nonetheless concluded, based on its evaluation of all of the evidence, that, even when properly accounting for such costs, the town's methodology overstated the value of the

plaintiff's fixtures and needed to be adjusted.

The trial court, as the fact finder, is privileged to accept, in whole or in part, *whatever* testimony it reasonably believes to be credible. See *Walgreen Eastern Co.* v. *West Hartford*, supra, 329 Conn. 493; *Digital 60 & 80 Merritt, LLC* v. *Board of Assessment Appeals*, supra, 211 Conn. App. 578. There is no requirement that a court disregard the entirety of an expert's testimony if it finds only a portion of it not to be credible. See *Nutmeg Housing Development Corp.* v. *Colchester*, supra, 324 Conn. 10 ("the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible" (internal quotation marks omitted)); *Xerox Corp.* v. *Board of Tax Review*, 175 Conn. 301, 306, 397 A.2d 1367 (1978) ("No one appraisal method was controlling on [the court]. . . . [It] had the right to accept so much of the testimony of the experts and the recognized appraisal methods which they employed as [it] found applicable." (Internal quotation marks omitted.)); *Grolier, Inc.* v. *Danbury*, 82 Conn. App. 77, 80, 842 A.2d 621 (2004) ("[w]hen the court acts as the fact finder, it may accept or reject evidence regarding valuation as it deems appropriate"). Accordingly, the court was permitted to find Krieser's testimony and appraisal reports credible notwithstanding its agreement with the town that Krieser's valuation did not properly account for the fixtures' installation and transportation costs. See, e.g., *Banco Popular North America* v. *du'Glace, LLC*, supra, 146 Conn. App. 660 (irregularities in expert appraiser's valuation methodology went to weight, not admissibility, of appraisal report and expert testimony).

Moreover, there is sufficient evidence in the record to support the court's finding that the town had overvalued the plaintiff's property. In particular, Krieser explained why the town's application of the depreciation tables set forth in § 12-63 (b) did not result in the calculation of the true and actual value of the plaintiff's fixtures. Krieser testified that his "main comment about the town's tables is that they're a static table. They use the same table year after year without—as far as I—and, again, I don't know how often they're actually reviewed, but looking at the marketplace—it is my opinion [based on] looking at the marketplace, that the tables that the town has proffered do not appropriately consider economic obsolescence." Furthermore, as set forth in part I of this opinion, Krieser testified as to his opinion of the true and actual value of the fixtures and thoroughly explained his methodology for concluding that the town's values were overstated.

Given Krieser's testimony, it was reasonable for the court to conclude that the town's use of the § 12-63 (b) (6) uniform depreciation schedule did not appropriately factor in the economic obsolescence of retail fixtures, thus overvaluing them, even after correcting Krieser's opinion for deficiencies like not properly accounting

for transportation and installation expenses.

Consequently, we conclude that the court's finding that the plaintiff had sufficiently demonstrated aggrievement was not clearly erroneous because there was evidence to support a conclusion that the town overvalued the plaintiff's retail fixtures.

B

The town further argues that the court's findings of true and actual value of the fixtures were clearly erroneous because no "reliable expert evidence existed at all to support the trial court's arbitrary 20 percent increase in Krieser's figures to reach [the true and actual] value." In particular, the town contends that, "[a]lthough a trial court may weigh and accept expert evidence before it, the court may not *supply* expert evidence that does not exist . . . ." (Emphasis in original.) Again, we are not persuaded.

Because the town claims that there was no evidence to support the court's 20 percent adjustment to Krieser's valuations, we apply the clearly erroneous standard of review. *Digital 60 & 80 Merritt, LLC* v. *Board of Assessment Appeals*, supra, 211 Conn. App. 601 n.23 (applying clearly erroneous standard to case in which court was confronted with conflicting methods and calculations of appropriate capitalization rate and gave credence to one over other as trier of fact).

The court concluded "that the analysis of . . . Krieser demonstrates that the town's valuation is in need of adjustment. . . . The court does not fully adopt Krieser's conclusions, however. The town has correctly noted the following: To a degree, the [fixtures do] not appear in fair condition. The town's photographic exhibits support a conclusion of good condition. The plaintiff's expert relied too heavily on values set by used furniture dealers. Finally, the plaintiff has not fully taken into account transportation and installation costs.

"The major issue in this case is the factor of depreciation. Use of [§ 12-63 (b) (6)] limits the rate of depreciation and obsolescence, while Krieser's analysis causes a more rapid depreciation. The court has taken these criticisms into account. Based on the court's review of the record, the court makes an [upward] adjustment of 20 percent to Krieser's valuation." (Citation omitted.) The town argues that, because there was no evidence that tied the problems the court identified in Krieser's analysis to the 20 percent adjustment the court applied, its use of that adjustment was clearly erroneous.

"Valuation is a matter of fact to be determined by the trier's independent judgment. . . . In actions requiring such a valuation of property, the trial court is charged with the duty of making an independent valuation of the property involved. . . . [N]o one method of valuation is controlling and . . . the [court] may select the one most appropriate in the case before

[it]. . . . Moreover, a variety of factors may be considered by the trial court in assessing the value of such property. . . . [T]he trier arrives at his own conclusions by weighing the opinions of the appraisers, the claims of the parties, and his own general knowledge of the elements going to establish value, and then employs the most appropriate method of determining valuation. . . . The trial court has broad discretion in reaching such conclusion, and [its] determination is reviewable only if [it] misapplies or gives an improper effect to any test or consideration which it was [its] duty to regard." (Internal quotation marks omitted.) *Abington, LLC* v. *Avon*, 101 Conn. App. 709, 715, 922 A.2d 1148 (2007); see also *Walgreen Eastern Co.* v. *West Hartford*, supra, 329 Conn. 492; *Sheridan* v. *Killingly*, 278 Conn. 252, 259, 897 A.2d 90 (2006).

A review of the record reveals that, in arriving at its conclusions as to the values of the fixtures, the court carefully weighed the opinions of the appraisers, the claims of the parties, and its own general knowledge of the elements relevant to establishing value. Specifically, the court thoroughly considered the testimony and written reports of both the plaintiff and the town's appraisers and ultimately determined that, although Krieser sufficiently demonstrated that the town had overvalued the plaintiff's property, his valuation method "did not fully take into account certain matters as outlined by the [town]." In particular, the court acknowledged that the property was in "good" rather than in "fair" condition, Krieser "relied too heavily on values set by used furniture dealers," and Krieser had not fully accounted for transportation and installation costs of the fixtures.

Although the court did not specify the factors it considered in making its 20 percent upward adjustment, it did not need to do so. Because no one method of valuation is controlling, the court need not specify the valuation method used; see *Digital 60 & 80 Merritt, LLC* v. *Board of Assessment Appeals*, supra, 211 Conn. App. 604; and the court is not required to set forth specific factors that were considered in arriving at that determination. The trial court's decision is reviewable only if it is apparent that it misapplied, overlooked, or gave a wrong or improper effect to any test or consideration that it was that court's duty to regard. See *Sheridan* v. *Killingly*, supra, 278 Conn. 259.

Contrary to the town's contention, adjusting Krieser's valuation by 20 percent to arrive at the true and actual value of the fixtures is not "supply[ing] expert evidence that does not exist," nor is it misapplying, overlooking, or giving a wrong or improper effect to any test or consideration that it was the court's duty to regard. (Emphasis omitted.) Rather, the 20 percent adjustment is simply an exercise of the court's broad discretion in coming to an independent conclusion as to the value of the property. There is nothing in our law indicating

that a court's conclusion as to valuation must be within parameters as set out by expert testimony. The court may accept or reject, in whole or in part, the testimony of experts and the appraisal methods employed by those experts. See *First Bethel Associates* v. *Bethel*, 231 Conn. 731, 741, 651 A.2d 1279 (1995) ("[a] trial court is vested with broad discretion in municipal tax appeals to determine true and actual value, and has the right to accept so much of the expert testimony and the recognized appraisal methods which are employed as it finds applicable" (internal quotation marks omitted)).

Moreover, when confronted with competing expert valuations a court can select a compromise figure and is not required to explain how it arrived at that figure. This court's decision in *Mirlis* v. *Yeshiva of New Haven, Inc.*, 205 Conn. App. 206, 257 A.3d 390, cert. denied, 338 Conn. 903, 258 A.3d 91 (2021), is instructive. In *Mirlis*, there was a dispute as to the value of the defendant's real property. Id., 208. "The court held an evidentiary hearing on the valuation dispute, at which each party submitted the testimony and written report of their respective appraisers. Both expert appraisers testified that they had used the sales comparison approach to determine the property's fair market value. Utilizing that approach, the defendant's appraiser, Patrick Wellspeak, initially estimated the value of the property to be $500,000 in light of comparable sales. Wellspeak then explained that he deducted $110,000 from that estimate due to 'environmental issues' on the property, which resulted in a fair market value of $390,000. [He] conceded that his conclusions with respect to those issues were predicated on a report . . . [that] identified environmental issues that allegedly existed on the property. . . .

"The plaintiff's appraiser, Patrick Craffey, concluded that the fair market value of the property in light of comparable sales was $960,000. [He] testified that he first 'became aware' of [the environmental] report after he had performed his appraisal and explained that the report did not change his conclusions as to the value of the property, as his appraisal was 'made irrespective of any environmental contamination.'

"In its subsequent memorandum of decision, the court began by noting that, in reaching its conclusions, it had 'carefully and fully considered and weighed all of the evidence received at the hearing; evaluated the credibility of the witnesses; assessed the weight, if any, to be given specific evidence and measured the probative force of conflicting evidence; reviewed all exhibits, relevant statutes, and case law; and has drawn such inferences from the evidence, or facts established by the evidence, that it deems reasonable and logical.' The court noted that both appraisers had utilized the sales comparison method to determine fair market value and had agreed that the highest and best use of the property

was as a school. The court further found that the parties' respective appraisers, 'while employing the same . . . method for valuation . . . took different approaches in doing so. . . . [T]he parties each took issue with the properties chosen by the other appraiser in determining the comparative sales.' The court also noted that, unlike Craffey, Wellspeak had considered 'environmental impact on the fair market value.'

"The court emphasized that '[t]he ultimate opinions regarding valuation were at considerable variance. Both parties take issue with the comparable sales considered by the other, and each takes issue with the other's treatment of environmental concerns.' The court continued: 'When confronted with conflicting evidence as to valuation, the trier may properly conclude that under all the circumstances a compromise figure most accurately reflects fair market value.' The court then found, in light of 'all of the evidence presented,' that the fair market value of the property was $620,000." (Emphasis omitted.) Id., 208–10.

On appeal, the defendant claimed that "the court [had] improperly determined the fair market value of the property, contending that 'no evidence' supported its valuation." Id., 210. This court disagreed, explaining that, "[w]hen confronted with conflicting evidence as to valuation, the trier may properly conclude that under all the circumstances a compromise figure most accurately reflects fair market value. [*New Haven Savings Bank* v. *West Haven Sound Development*, 190 Conn. 60, 70, 459 A.2d 999 (1983)]. The court further held that such an approach, which was clearly an effort to give due regard to all circumstances, was reasonable. Id.; accord *Whitney Center, Inc.* v. *Hamden*, 4 Conn. App. 426, 429–30, 494 A.2d 624 (1985) (applying *New Haven Savings Bank* and concluding that trial court properly determined that this is a case where under all the circumstances a compromise figure will most accurately reflect the fair market value)." (Internal quotation marks omitted.) *Mirlis* v. *Yeshiva of New Haven, Inc.*, supra, 205 Conn. App. 211–12. Ultimately, this court held that the record contained "ample documentary and testimonial evidence regarding the valuation of the property" and that "in light of the significant disagreements between the expert appraisers offered by the parties, the court reasonably could conclude that a compromise figure best reflected the fair market value of the property." Id., 212.

Similarly, in the present case, the court was presented with conflicting expert testimony concerning the proper valuation of the plaintiff's fixtures. The experts disagreed on the overall methodology to be used to value the plaintiff's fixtures and on the proper depreciation factor to be applied, with Krieser testifying that his combined cost and market based approach—which used a unique, market based depreciation factor he

calculated—was the appropriate valuation method, and Topliff testifying that a modified cost approach that utilized the § 12-63 (b) (6) statutory depreciation schedule was the correct method.[16] Further, the court heard conflicting expert testimony as to the condition of the plaintiff's fixtures. Krieser testified that the fixtures were in "fair" condition while Kosofsky testified that the fixtures were in "good" condition. Notably, Krieser acknowledged on recross-examination that fixtures in good condition would be valued more than those in fair condition.[17]

On the basis of the evidence it heard, the court was able to determine the relative importance of those parts of Krieser's analysis with which it disagreed to Krieser's valuation conclusions and determined that those faults, when taken together, required a 20 percent upward adjustment of Krieser's ultimate valuation conclusions. In other words, the court accepted and rejected portions of each expert's testimony in an effort to account for the conflicting evidence presented.

Contrary to the contention of the town, we cannot say that the court's upward adjustment is clearly erroneous. The record before us contains ample documentary and testimonial evidence regarding the valuation of the property in question. Moreover, in light of the disagreements between the expert appraisers offered by the parties, the court reasonably could conclude that a compromise figure best reflected the true and actual value of the fixtures. We conclude that such an approach, which was an effort to give due regard to all circumstances, was reasonable. See *Whitney Center*, *Inc.* v. *Hamden*, supra, 4 Conn. App. 429–30 (affirming trial court's approach in reaching compromise valuation figure as it was effort to give due regard to all circumstances); see also *Hartford* v. *CBV Parking Hartford*, *LLC*, 330 Conn. 200, 211, 192 A.3d 406 (2018) ("the trial court can make an independent determination of value and fair compensation in light of all the circumstances and is not bound by the valuations or valuation methods used by the appraisers"); *Abington*, *LLC* v. *Avon*, supra, 101 Conn. App. 715, 720 (trial court has duty of making independent determination of true and actual value of property by weighing opinions of appraisers, claims of parties in light of circumstances in evidence bearing on value, its own general knowledge of elements going to establish value, and employing most appropriate method of valuation).

Finally, the court was not required to make its adjustment with exacting precision. See *Redding Life Care*, *LLC* v. *Redding*, 308 Conn. 87, 110, 61 A.3d 461 (2013) ("[t]he process of estimating the value of property for taxation is, at best, one of approximation and judgment, and there is a margin for a difference of opinion" (internal quotation marks omitted)); *Digital 60 & 80 Merritt*, *LLC* v. *Board of Assessment Appeals*, supra, 211 Conn.

App. 604 (same); *Housing Authority* v. *CB Alexander Real Estate, LLC*, 107 Conn. App. 167, 180, 944 A.2d 1010 (2008) (valuation of property "is a matter of opinion based on all the evidence and, at best, is one of approximation" (internal quotation marks omitted)). We cannot say that the court's use of a 20 percent upward adjustment to Krieser's values did not represent at least a reasonable approximation of the value of the plaintiff's property.

In short, the court was presented with detailed expert testimony and reached a logical conclusion as to the value of the property based on the testimony it credited. In light of our examination of the evidence in the record, we conclude that the court's application of a 20 percent upward adjustment to Krieser's valuations was not clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] General Statutes § 12-117a provides in relevant part: "(a) (1) Any person . . . claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application . . . to the superior court for the judicial district in which such town or city is situated . . . .

(b) The court shall have power to grant such relief as to justice and equity appertains, upon such terms and in such manner and form as appear equitable . . . . If the assessment made by the board of tax review or board of assessment appeals, as the case may be, is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes . . . ."

Although § 12-117a has been amended since the events underlying the present case; see Public Acts 2022, No. 22-146, § 19; Public Acts 2022, No. 22-118, § 468; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[2] By statute, all resident taxpayers in the state of Connecticut are required to file an annual declaration of their taxable tangible personal property located in the state. See General Statutes § 12-40 (requiring assessor to give public notice to all persons liable to pay taxes that they are required to file declaration of their taxable personal property). In addition to resident taxpayers filing their personal property declaration, the local assessor must send a declaration form to nonresident property owners having taxable personal property located in the town to list all of their personal property and to assign a value for each item listed. See General Statutes § 12-43 (a) ("[e]ach owner of tangible personal property located in any town . . . who is a nonresident of such town, shall file a declaration of such personal property with the assessors of the town in which the same is located on such assessment day").

Pursuant to General Statutes § 12-62a (b), all property within a municipality is liable for taxation at a uniform rate of 70 percent of its "present true and actual value . . . ." In determining the present true and actual value, "an assessor shall use generally accepted mass appraisal methods which may include, but need not be limited to, the market sales comparison approach to value, the cost approach to value and the income approach to value." General Statutes § 12-62 (b) (2). "If such property is purchased, its true and actual value shall be established in relation to the cost of its acquisition, including transportation and installation, and shall reflect depreciation in accordance with the schedules set forth in subdivisions (3) to (6), inclusive, of this subsection. . . ." General Statutes § 12-63 (b) (2).

Both the assessor and the taxpayer, however, are free to challenge the efficacy of the depreciation scales set forth in § 12-63 (b) as applied to particular property. Section 12-63 (b) (11) provides that, "[i]f the assessor determines that the value of any item of personal property, other than a motor vehicle, produced by the application of the schedules set forth in

this subsection does not accurately reflect the present true and actual value of such item, the assessor shall adjust such value to reflect the present true and actual value of such item." Similarly, § 12-63 (b) (12) provides that "[n]othing in this subsection shall prevent any taxpayer from appealing any assessment made pursuant to this subsection if such assessment does not accurately reflect the present true and actual value of any item of such taxpayer's personal property." Although § 12-63b (a) specifies three different methods of valuation to determine the true and actual value of real property, no such approved methods of valuation are specified for determining the true and actual value of personal property of the kind at issue in the present case.

Although § 12-63 has been amended since the events underlying the present case; see Public Acts 2022, No. 22-118, § 500; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] "The plaintiff and the town calculated the following depreciated valuations of the plaintiff's business personal property:

	"Town's Value	Plaintiff's Amended Value
"October 1, 2014	$632,457	$546,300
"October 1, 2015	$856,629	$678,700
"October 1, 2016	$911,345	$589,600
"October 1, 2017	$847,500	$512,400"

Kohl's Dept. Stores, Inc. v. *Rocky Hill*, supra, 195 Conn. App. 834 n.5.

[4] "Pursuant to General Statutes § 12-111, a taxpayer claiming to be aggrieved by the assessor of the municipality may file an appeal with the municipal board of assessment appeals for relief. Here, the plaintiff filed its appeal with the board." *Kohl's Dept. Stores, Inc.* v. *Rocky Hill*, supra, 195 Conn. App. 834–35 n.6.

[5] The phrase "true and actual value" is synonymous with "fair market value." See General Statutes § 12-63 (a). As our Supreme Court "explained more than fifty years ago, [t]he expressions actual valuation, actual value, market value, market price and . . . fair value are synonymous. Usually, these expressions mean the figure fixed by sales in ordinary business transactions, and they are established when other property of the same kind in the same or a comparable location has been bought and sold in so many instances that a value may reasonably be inferred. . . . In other words, the best test is ordinarily that of market sales. . . . [When] evidence of such sales is not available, other means must be employed to ascertain the present true and actual valuation. . . . No one method is controlling; consideration should be given to them all, if they have been utilized, in arriving at the value of the property." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Redding Life Care, LLC* v. *Redding*, 308 Conn. 87, 112–13, 61 A.3d 461 (2013).

[6] The plaintiff also introduced, without objection, digital photographs of the fixtures, which Krieser had taken during his investigation.

[7] Krieser concluded that the true and actual value of the fixtures after depreciation was $417,003.14 for 2014, $566,859.98 for 2015, $479,099.26 for 2016, and $407,866.86 for 2017.

[8] General Statutes § 12-63 (b) (6) provides: "The following schedule of depreciation shall be applicable with respect to all tangible personal property other than that described in subdivisions (3) to (5), inclusive, and subdivision (7) of this subsection:

"Assessment Year Following Acquisition	Depreciated Value As Percentage Of Acquisition Cost Basis
"First year	Ninety-five per cent
"Second year	Ninety per cent
"Third year	Eighty per cent
"Fourth year	Seventy per cent
"Fifth year	Sixty per cent
"Sixth year	Fifty per cent
"Seventh year	Forty per cent
"Eighth year and thereafter	Thirty per cent"

[9] In its posttrial brief, the town maintained that the highest and best use of the property was continued use as retail fixtures in the plaintiff's store. At trial, Krieser testified that the highest and best use of the property was continued use in *any* retail establishment. "A property's highest and best use is commonly accepted by real estate appraisers as the starting point for the analysis of its true and actual value. . . . [U]nder the general rule

of property valuation, fair [market] value, of necessity, regardless of the method of valuation, takes into account the highest and best value of the land. . . . The highest and best use conclusion necessarily affects the rest of the valuation process because, as the major factor in determining the scope of the market for the property, it dictates which methods of valuation are applicable." (Internal quotation marks omitted.) *Digital 60 & 80 Merritt, LLC* v. *Board of Assessment Appeals*, 211 Conn. App. 559, 574–75, 274 A.3d 952, cert. denied, 343 Conn. 926, 275 A.3d 1212 (2022). The court concluded that it was determining the true and actual value of the plaintiff's fixtures "as installed . . . at this store."

[10] "The American Society of Appraisers is the largest multidisciplinary appraisal organization in the world."

[11] The Royal Institute of Chartered Surveyors is "a globally recognised professional body" that promotes and enforces "the highest professional standards in the development and management of land, real estate, construction and infrastructure." The Royal Institute of Chartered Surveyors, About RICS, available at https://www.rics.org/about-rics (last visited May 11, 2023).

[12] "Under the cost approach, the appraiser estimates the current cost of replacing the subject property with adjustments for depreciation, the value of the underlying land and entrepreneurial profit. . . . This approach is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market." (Citation omitted; internal quotation marks omitted.) *Sun Valley Camping Cooperative, Inc.* v. *Stafford*, 94 Conn. App. 696, 702 n.10, 894 A.2d 349 (2006).

[13] "The comparable sales approach is also known as the market data approach or sales comparison approach. . . . It is a process of analyzing sales of similar recently sold properties in order to derive an indication of the most probable sales price of the property being appraised. The reliability of this technique is dependent upon (a) the availability of comparable sales data, (b) the verification of the sales data, (c) the degree of comparability or extent of adjustment necessary for time differences, and (d) the absence of non-typical conditions affecting the sales price. . . . After identifying comparable sales, the appraiser makes adjustments to the sales prices based on elements of comparison." (Citations omitted; internal quotation marks omitted.) *Sun Valley Camping Cooperative, Inc.* v. *Stafford*, 94 Conn. App. 696, 702 n.8, 894 A.2d 349 (2006).

[14] In advancing this argument, the town points to *Robinson* v. *Westport*, 222 Conn. 402, 610 A.2d 611 (1992), in which our Supreme Court stated that "[p]urely imaginative or speculative value should not be considered" when valuing property. (Internal quotation marks omitted.) Id., 409.

The issue in *Robinson*, however, related to determining the highest and best use of real property in order to calculate the just compensation owed to a property owner whose land had been taken by eminent domain. Id., 403. In such cases, "[t]he amount that constitutes just compensation is the market value of the condemned property when put to its highest and best use at the time of the taking." Id., 405. Our Supreme Court held that a landowner "must provide the trier with sufficient evidence from which it could conclude that it is reasonably probable that the land to be taken would, but for the taking, be devoted to the proposed use" at the time of taking. (Internal quotation marks omitted.) Id., 409. Moreover, "[t]he uses to be considered must be so reasonably probable as to have an effect on the present market value of the land. Purely imaginative or speculative value should not be considered." (Emphasis omitted; internal quotation marks omitted.) Id. Therefore, the phrase "purely imaginative or speculative" related to whether a landowner's proposed highest and best use of property was reasonably probable such that a valuation method that depended on that use was appropriate.

In the present case, the town maintained that the highest and best use of the property was continued use as retail fixtures in the plaintiff's store. The court concluded that it was determining the true and actual value of the plaintiff's fixtures "as installed . . . at this store." The only question at issue was how to calculate the appropriate depreciation in value of the fixtures over time. For the reasons stated, we conclude that the methodology used by Krieser to calculate the depreciation in value of the fixtures was not speculative or purely imaginary.

[15] "The Court: Why did you—that's the point, a point here, anyway. Why did you think that [speaking to dealers to obtain a depreciation factor] was the way to go with the—again, we have the trend factor, cost approach showing that the property increased in value from X to Y, but again, in the same nine years, there would be some falloff because they're now in fair

condition, why was the way to determine what that falloff would be based upon the used furniture market?

* * *

"[Krieser]: . . . One of the things that the American Society of Appraisers teaches in their book is what we call an aggregate obsolescence factor which is taking your cost approach and just simplistically taking your cost approach using a market analysis to calculate or quantify that difference or the economic obsolescence. So, the best—the best indicator of economic obsolescence is what the used market is bearing for that particular asset."

[16] Interestingly, the court heard testimony that *both* the town and Krieser failed to properly account for the installation and transportation costs of the plaintiff's fixtures in their valuations. Krieser testified that, in calculating the fixtures' true and actual values, he was operating under the assumption that the transportation and installation costs inherent in the plaintiff's overall acquisition costs depreciate at the same rate as the cost of the fixture itself. In addition, Topliff, explained that, similar to Krieser, he accepted the plaintiff's declaration of personal property as accurately reporting the fixtures' original acquisition costs, including transportation and installation costs, and simply applied the § 12-63 (b) (6) statutory depreciation schedule to those costs as appropriate depending on the year in which the fixtures were purchased and installed.

[17] Krieser's report indicated that a fixture that was in "good" condition had a depreciation factor of 38 percent, i.e., it had lost 62 percent of its value. Meanwhile, a fixture that was in "fair" condition had a depreciation factor of 33 percent, i.e., it had lost 67 percent of its value.