NO. CV 04 0072796S	:	SUPERIOR COURT
CADLEROCK PROPERTIES JOINT VENTURE, L.P.	:	JUDICIAL DISTRICT OF WINDHAM
V.	:	AT PUTNAM
TOWN OF ASHFORD	:	OCTOBER 14, 2005

MEMORANDUM OF DECISION

This is a real estate tax appeal by the plaintiff, Cadlerock Properties Joint Venture, L.P. (Cadlerock), challenging the assessor's valuation of the plaintiff's property in the town of Ashford (town) for the revaluation year of October 1, 2002. This appeal covers the subsequent tax years of October 1, 2003 and October 1, 2004.

The subject property spans almost 335 acres with approximately 284 acres located in Ashford and the balance in the adjoining town of Willington. The subject consists of ten contiguous parcels along Squaw Hollow Road, also known as U.S. Route 44. Although the subject property had previously been improved with a restaurant and shop, these improvements were destroyed by a fire leaving the subject as unimproved land.

The appeal is brought in twenty counts covering the Grand Lists of October 1, 2003 and October 1, 2004. On the 2002 Grand List, the assessor valued the lots as follows:

Lot No.	Value
3	$ 44,500
6	$ 65,400
7	$ 106,000
8 (known as 438 Squaw Hollow Road)	$ 529,800
9 (known as 428 Squaw Hollow Road)	$ 76,500
10	$ 74,930
13	$ 46,800
14	$ 28,800
19	$ 353,000
27	$ 43,900
	$1,369,630

See Plaintiff's Exhibit 12, p. 24.

The plaintiff acquired the subject property from Cadle Properties of Connecticut, Inc. (Cadle), a related party, on November 15, 1996, for a reported consideration of $620,000. Cadle had previously acquired the property on September 7, 1995, by deed in lieu of foreclosure. The reported consideration for this deed was the forgiveness of a $795,000 debt secured by a previously acquired mortgage.

The subject property, prior to its acquisition by the plaintiff, was subdivided into the present ten lots in 1977 and 1978. Plaintiff's appraiser Robert G. Stewart (Stewart) stated: "One previous use of the subject has been a driving range on the front portion, which is when tractor-trailers started to appear behind the driving range. Reportedly, these tractor trailers were used to haul in and out wiring that was burned on site to eliminate the insulation so the metal could be sold for scrap. At that time some soils were contaminated. Prior to the golf course, the Wagon Shed Restaurant and Shops operated

on Lots 8 and 9, however it burned down in the early 1980s. The most recent activity was farming on parts of Lot 3, 6, 7, 8 and 19, with corn grown by a local farmer who leased the land up until 3 or 4 years ago." (Plaintiff's Exhibit 12, p. 65.)

The Department of Environmental Protection (DEP) conducted site investigations on the subject property between 1991 and 1997 that revealed significant contamination of the soil and groundwater and the presence of solid waste pollution. See Cadlerock Properties Joint Venture, L.P. v. Commissioner of Environmental Protection, 253 Conn. 661, 665, 757 A.2d 1 (2000), cert. denied, 531 U.S. 1148, 121 S. Ct. 1089, 148 L. Ed. 2d 963 (2001). Following Cadle's acquisition of the subject property in 1996, DEP could not persuade Cadle to remediate the contamination voluntarily. As a result, DEP issued an abatement order on February 26, 1997. Id., 666. Upon learning that the property was transferred to the present plaintiff, DEP withdrew the abatement order. On August 15, 1997, DEP issued a new abatement order covering all ten lots. This new order required the proper removal and disposal of all solid waste and the submission to DEP of a study describing the extent and degree that the soil, surface water and ground water had been polluted. On December 30, 1998, this new order was recorded in the town land records. The reported cost estimate for all of the DEP requirements is between $1.5 million and $3.5 million, which exceeds the present value of the ten lots.

Stewart recognized, as does the court, that the highest and best use of the subject lots is complicated. The court agrees with Stewart's analysis of the highest and best use of the subject as follows: "For valuation purposes, the properties were sorted by their individual highest and best uses and valued comparing them to the same highest and best use comparables. That is, Lots 3 & 6 as single-family building lots. Lot 13 is zoned both commercial and residential but is a rear lot that would most likely not be able to support a commercial use. Therefore, it was valued as a rear building lot that needs a zone change and developed residentially. Lot 7, 8, 9, 10 and 14 were valued as [commercially- zoned] building lots needing individual approval. Lots 10 & 14 were also compared to a residential lot sale showing they both have the same value as residential or commercial. Lot 19 was valued as residential acreage and was compared to sales of subdividable acreage, recognizing the extent of wetlands in the southern half. Lot 27 was valued as the rear part of a residential lot whose highest and best use is to sell to one of the abutters." (Plaintiff's Exhibit 12, p. 68.)

Stewart further recognized that the sales comparison approach is the only method to determine the fair market value of the subject property. Neither the cost approach nor the income approach is appropriate here because the property is unimproved and unable to produce income.

Using the sales comparison approach, Stewart valued the ten lots under the

following two theories:

1) that the lots are contaminated affecting their value and

2) that the lots are valued as if the contamination did not exist.

Under the first theory, Stewart concluded that the total fair market value of the ten contaminated lots is $143,500. Under the second theory, Stewart concluded that the total fair market value of the ten clean lots, as of October 1, 2002, was $955,000.

Section 12-63e[1] of the General Statutes provides that an assessor shall not reduce the value of non-residential property if the value has been affected by contamination caused by pollution or an environmentally hazardous condition under two conditions. Under the first condition, the owner of the property caused the contamination. Under the second condition, the owner of the property purchased the property with knowledge that it contained contamination. Under § 12-63e, the mere ownership of contaminated property

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[1] General Statutes § 12-63e, applicable to this case, provides: "Notwithstanding the provisions of this chapter, when determining the value of any property, except residential property, for purpose of the assessment for property taxes, the assessors of a municipality shall not reduce the value of any property due to any polluted or environmentally hazardous condition existing on such property if such condition was caused by the owner of such property or if a successor in title to such owner acquired such property after any notice of the existence of any such condition was filed on the land records in the town where the property is located. For purposes of this section, an owner shall be deemed to have caused the polluted or environmentally hazardous condition if the Department of Environmental Protection, the United States Environmental Protection Agency or a court of competent jurisdiction has determined that such owner caused such condition or a portion of it."

does not obligate the current owner to abate the contamination. Section 12-63e is clear that "the Department of Environmental Protection, the United States Environmental Protection Agency or a court of competent jurisdiction . . . [determines] that such owner *caused* such condition or a portion of it." (Emphasis added.)

In the present case, the town does not claim that Cadlerock caused the contamination. Instead, the town claims that Cadlerock purchased the property with actual knowledge of the contamination. The town makes this claim even though the DEP's notice of the contamination was recorded in the town land records after Cadlerock acquired the subject property. The facts recited in Cadlerock Properties Joint Venture, L.P. v. Commissioner of Environmental Protection, supra, support a finding that the plaintiff had actual knowledge of the contamination prior to taking title to the subject property in 1996. Under these circumstances, Cadlerock is not entitled to any reduction in value to commercial property from contamination. However, as to residential lots 3, 19 and 27, § 12-63e does not prohibit a reduction in value due to contamination regardless of whether or not the owner caused the contamination.

The issue of whether Cadlerock is obligated to abate the contamination is not before the court. However, pursuant to § 12-63e, Cadlerock is entitled to claim a reduction in value as to the residential lots only, not to the commercial lots.

The court notes that the commercially-zoned area of the subject property is

outlined in red on Plaintiff's Exhibit 12, p. 56. Lots 6, 7, 8, 9, 10, 13 and 14 are either fully or partially within the commercial zone.[2]

As previously noted, Stewart's appraisal of the subject property, as of October 1, 2002, is broken down into a valuation of the ten lots as affected by the contamination and a valuation of the ten lots "as clean."

Residential lots 3, 19 and 27 are not contaminated lots and, therefore, should be valued without any reduction for contamination. As previously discussed, the commercially-zoned lots are not entitled to a reduction in value despite the presence of contamination.

Accepting Stewart's determination of value of the lots as clean and using the sales comparison approach, the court finds that the fair market value of the residential lots are as follows:

Residential Lot No.	Value	Features
3	$ 47,500	11.515 acres - 75% covered by swamp 50 ft. frontage on Squaw Hollow Rd.
19	$370,000	225 acres of unimproved land 580 ft. frontage on Rte. 44/Karosi Rd. Moritz Pond covers 8.5 acres for marshy landscape

[2] The court notes that portions of lots 6, 7, 8 and 13 are zoned for residential use.

27	$ 20,000	9.2 acres; No frontage - 1,100 ft. north of Rte. 44 Two brooks flow in from Willington Stream flows south along eastern boundary

Although residential lots 3, 19 and 27 are covered by the recorded DEP order, the order itself, being only an attachment to secure the clean up performance as to commercial lots, does not relate to contamination on the residential lots.

Accepting Stewart's determination of the value of the commercial lots of the subject as credible, using the sales comparison approach, the court finds the fair market value of these lots as follows:

Commercial Lot No.	Value
6	$ 57,500
7	$ 67,000
8	$225,000
9	$ 53,000
10	$ 40,000
13	$ 35,000
14	$ 40,000

Considering the determination of value of the residential and commercial lots, as discussed above, the court finds the total fair market value of the subject property as of October 1, 2002, to be $955,000.

Accordingly, the assessor's valuation of $1,369,630 is in excess of the valuation found by the court. Because the plaintiff is found to be aggrieved by the valuation of the assessor, the plaintiff's appeal is sustained. Judgment may enter in accordance with this decision without costs to either party.

Arnold W. Aronson
Judge Trial Referee