NO. CV 04 0104527S	:	SUPERIOR COURT
GOODSPEED AIRPORT, LLC	:	JUDICIAL DISTRICT OF
	:	MIDDLESEX
	:	AT MIDDLETOWN
v.		
TOWN OF EAST HADDAM	:	NOVEMBER 7, 2006

MEMORANDUM OF DECISION

This action is a real estate tax appeal brought in two-counts concerning the valuation of a small private airport located on the easterly side of the Connecticut River (river) known as 15 Lumberyard Road in the town of East Haddam (town). Timothy Mellon is the single member of the plaintiff limited liability company.

The subject property is a commercial utility airport consisting of one paved runway 2,100 feet in length lacking a control tower. The airport primarily serves small single-engine airplanes weighing 12,500 pounds or less.

The subject property has a total of 57.12 acres of land lying west of Creamery Road and running approximately 2,379 feet north to south along the easterly side of the river. The airport consists of 14.08 acres of land containing a terminal building and two buildings containing a combined total of 35 individual hangars. The rental rates for individual hangars range approximately between $250 to $450 per month and, at full capacity, the hangars have the potential to produce yearly rental income in the amount of

$120,000.

The balance of the land, consisting of 43.04 acres, contains open fields that are located entirely within a flood plain. At their highest elevation of 9 feet, the open fields are well below the flood plain level of 11 feet. The assessor lists the subject property in a residential district known as the "Lake & Riverfront District" (LR District). See Plaintiff's Exhibits 2 and 8.

In count one, the plaintiff claims that the assessor made an excessive valuation of the subject based upon an improper classification. The plaintiff alleges in this first count that, pursuant to General Statutes § 12-107e, it made an application to the town's assessor to classify 43.04 acres of the subject's overall total acreage of 57.12 acres as open space land on the Grand List of October 1, 2003. The plaintiff further alleges that the assessor's valuation of the subject property in the amount of $2,354,020, as of October 1, 2003, and the assessor's refusal to classify the 43.04 acres of land as open space resulted in an excessive, disproportionate and unlawful violation of General Statutes § 12-63 (a).[1]

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[1] General Statutes § 12-63 (a) provides, in relevant part, as follows: "The present true and actual value of land classified as . . . open space land pursuant to section 12-107e shall be based upon its current use without regard to neighborhood land use of a more intensive nature, provided in no event shall the present true and actual value of open space land be less than it would be if such open space land comprised a part of a tract or tracts of land classified as farm land pursuant to section 12-107c. The present true and actual value of all other property shall be deemed by all assessors and boards of assessment appeals to be the fair market value thereof . . . ."

The plaintiff brings the second count under General Statutes § 12-119 and claims that the failure to classify 43.04 acres of the subject land as open space, as of October 1, 2003, was in violation of § 12-107e, making the assessment manifestly excessive under a wrongful classification.

Section 12-107e provides, in relevant part: "Classification of land as open space land.

> "(a) The planning commission of any municipality in preparing a plan of development for such municipality may designate upon such plan areas which it recommends for preservation as areas of open space land, provided such designation is approved by a majority vote of the legislative body of such municipality. Land included in any area so designated upon such plan as finally adopted may be classified as open space land for purposes of property taxation or payments in lieu thereof if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land between the date of the adoption of such plan and the date of such classification.
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> "(b) An owner of land included in any area designated as open space land upon any plan as finally adopted may apply for its classification as open space land on any grand list of a municipality by filing a written application for such classification with the assessor thereof . . . . The assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of development which adversely affects its essential character as an area of open space land and, if the assessor determines that there has been no such change, said assessor shall classify such land as open space land and include it as such on the grand list. An application for classification of land as open space land shall be made upon a form prescribed by the Commissioner of Agriculture . . .
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> "(c) Failure to file an application for classification of land as open space land within the time limit prescribed in subsection (b) of this section and in the manner

and form prescribed in said subsection (b) shall be considered a waiver of the right to such classification on such assessment list.

"(d) Any person aggrieved by the denial by an assessor of any application for the classification of land as open space land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the doings of assessors or boards of assessment appeals."

The essential elements of § 12-107e (a)-(b) are as follows:

(1) the planning commission designates a plan of development with areas recommended for preservation as areas of open space land;

(2) the commission's designation is approved by a majority vote of the municipality's legislative body;

(3) a property owner within the open space designation may apply in writing to the assessor for a designation that the owner's land be classified as "open space land" on any Grand List and

(4) the assessor determines whether there has been any change in the essential character of the land as open space land and if there has been no change, the assessor must classify such land as open space land and include it as such on the Grand List.

The town adopted its plan of development in 1981. On November 10, 1998, the town amended its plan of development to include the following provision: "Pursuant to the provisions of Section 12-107e of the Connecticut General Statutes, as amended, all land that is vacant or portions of land not built upon that is in excess of the minimum zoning requirement for area is eligible for open space designation." (Plaintiff's Exhibit 9.)

The statement of intent accompanying the amendment recites, in relevant part, that "the [t]own . . . for the past [twenty-five] years has established a fair and equitable method of assessment on lots subdivided but not built upon or separated by deed. This method of assessment should continue. Whether part of a subdivision along an existing road or one created with the construction of a new road, it is understood that lots not built upon do not bear any additional burden on the taxpayers. The commission's intent is to allow for the creation of neighborhoods that meet the intent of the owner, rather than force the owner to immediately develop lots due to fiscal concerns. If these subdivided lots are designated as open space lots, the financial burden is lessened, and the owner may lengthen the actual time to build out all of the lots. . . . The designation of these subdivided lots as open space lots benefits the owner and the [to]wn . . . . In the case of vacant subdivided lots, only lots that have been deeded out shall be declassified from the open space designation." (Plaintiff's Exhibit 9.)

On October 8, 2003, Timothy Mellon, acting on behalf of the plaintiff, filed an application with the assessor for classification of a portion of its property, 43.04 acres, as open space land. See Plaintiff's Exhibit 3. This application recited the description of the land as: "Agricultural Flood Plain; Used as Airport since 1964."

On December 8, 2003, the assessor responded to the plaintiff's application by quoting from the town's plan of development and commenting that "[b]ased upon my

interpretation of this language, I question the amount of acreage Goodspeed Airport, LLC has requested to be classified as open space. Because the airport is a special exception to East Haddam's zoning regulations there is no mention of what the 'minimum zoning requirement for area' is. It is my opinion that because there is no specified minimum acreage for its use, the property must be considered as being currently at its minimum zoning requirements, and therefore no portion of the property qualifies." (Plaintiff's Exhibit 5.) Subsequently, on February 17, 2004, the plaintiff appealed the assessor's decision to the town's board of assessment appeals. The board declined to hear the appeal. See Plaintiff's Exhibit 7.

It is the assessor's position that the special exception granting the plaintiff an airport use for the subject property applied to the whole 57.12 acres of land, not just to the small part consisting of 14.08 acres that is presently used for airport purposes. The assessor further contends that the open space regulations apply only to open space outside of the minimum area requirements of the zone within which the property lies and that the special exception granted to the plaintiff contained no minimum area requirements. The assessor notes that if the special exception had been limited to only the 14.08 acres of the subject, the balance of the 43.04 acres would have been eligible for open space designation.

The plaintiff contends that the condition of the acreage has not changed and that in order for the assessor to designate the 43.04 acres of land as open space land, the land need only lie within an area designated by the planning commission and the town. The plaintiff argues that the minimum area requirement of the zoning regulations is not a factor to be considered by the assessor in designating the subject 43.04 acres as open space land, and therefore, the assessor should have granted the plaintiff's application for open space designation.

The issue in this case is whether the plaintiff, operating a commercial airport under a special exception to the town's zoning regulations, must meet a specified minimum area requirement as a condition to having a portion of the subject property designated as open space land.

The town's 1981 plan of development sets out the town's proposed land use in Chapter VIII. The plan of development identifies the existing and proposed open space in the town as follows:

(1) All existing State of Connecticut Park and Forest Land;

(2) Town of East Haddam municipal, recreational and open space areas;

(3) East Haddam Fish and Game Club property which is related in the Eight Mile River Preservation Corridor;

(4) Nature Conservancy Land;

(5) Proposed Gateway Acquisition Areas;

(6) Inland wetlands and water courses and

(7) Special flood hazard areas.

See Plaintiff's Exhibit 9, p. 90.

The 1998 amendment to the original plan, reciting that "all land that is vacant or portions of land not built upon . . . is eligible for open space designation", appears to add an additional category to the preceding seven categories of open space set out in the 1981 plan of development.

The language in the 1998 Amendment is consistent with the definition of "open space" in § 12-107b (c)[2] which provides: "The term 'open space land' means any area of land, including forest land, land designated as wetland under section 22a-30 and not excluding farm land, the preservation or restriction of the use of which would (1) maintain and enhance the conservation of natural or scenic resources, (2) protect natural streams or water supply, (3) promote conservation of soils, wetlands, beaches or tidal

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[2] Public Act 04-115 renumbered General Statutes § 12-107b. Effective July 1, 2004, the statute reads as follows: "When used in sections 12-107a to 12-107e, inclusive: . . . (3) The term 'open space land' means any area of land, including forest land, land designated as wetland under section 22a-30 and not excluding farm land, the preservation or restriction of the use of which would (A) maintain and enhance the conservation of natural or scenic resources, (B) protect natural streams or water supply, (C) promote conservation of soils, wetlands, beaches or tidal marshes, (D) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces, (E) enhance public recreation opportunities, (F) preserve historic sites, or (G) promote orderly urban or suburban development . . . ." The old version of the statute will be referenced herein as this appeal concerns the October 1, 2003 Grand List.

marshes, (4) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces, (5) enhance public recreation opportunities, (6) preserve historic sites or (7) *promote orderly urban or suburban development[.]*" (Emphasis added.)

The purpose of the 1998 Amendment, as expressed in the preamble to the amendment, was to allow developers of residential subdivisions to keep an inventory of lots for future development that would be assessed as vacant land, not at the higher value of residential building lots. There was nothing expressed in the intent portion of the 1998 Amendment that could be construed as changing the concept of open space land, as defined in § 12-107b (c), to that of vacant land without environmental significance.

Section 12-107b (c) (7) refers to "orderly urban or suburban development" and this appears to be the sole relationship of the 1998 Amendment to the statutory definition of open space land. Because the 1998 Amendment solely addresses the promotion of urban and suburban development, it could not have been intended to override items (1) through (6) in § 12-107b (c).

In order to properly construe the town's 1998 Amendment to the plan of development, the court must consider the statutory scheme as a whole. See State v. AFSCME, 249 Conn. 474, 478, 732 A.2d 762 (1999). Applying the assessor's standard that all applications for open space designation must meet minimum zoning area

requirements would lead to such bizarre results as requiring land described in (1) through (6) of § 12-107b (c) to have a minimum area requirement.

For example, "conservation area" is defined in § 5 of the town's zoning regulations as "[e]nvironmentally sensitive areas with characteristics such as wetlands, floodplains, unprotected elements of natural landscape such as steep slopes, mature or productive forestland, contiguous open space or connective green belts, prime farmland, land that protects critical or threatened natural communities and species as identified by the Department of Environmental Protection, areas that have recreation value as recommended in the Recreation and/or Open Space Plan component to the Plan of Development, wildlife habitats and cultural features such as historic and archeological sites and scenic views." (Plaintiff's Exhibit 8, p. 11.) No minimum zoning area is mentioned as a requirement for open space designation in a conservation area.

The town's zoning regulations permit the use of land situated like the plaintiff's, in a flood plain zone, as an aircraft landing field subject to the commission's approval as a special exception. See Plaintiff's Exhibit 8, § 9.1.5, Uses Permitted in Districts and Zones. Section 9.4 of the zoning regulations provides for the uses permitted in "Residence, LR District." See Plaintiff's Exhibit 8, p. 30. Section 10.1 of the zoning regulations provides the schedule of conforming lots and buildings and lists a minimum lot area of one acre in the LR zone. See Plaintiff's Exhibit 8, p. 45.

As discussed above, the subject land lies in the LR District and the plaintiff operates an aircraft landing field pursuant to a special exception without a minimum area requirement. There is nothing in the zoning regulations that attaches a minimum area requirement to such a use of the land. However, the LR zone has a minimum area requirement of one acre for conforming lots and buildings. See Plaintiff's Exhibit 8, § 10.1, p. 45. The court cannot infer from the regulations that open space land, located in an LR district, must have a minimum area that is equated to that of a lot and building in the same zone. See Wood v. Zoning Board of Appeals, 258 Conn. 691, 699, 784 A.2d 354 (2001) ("in construing regulations, [the court's] function is to determine the expressed legislative intent").

The parties concede that the subject land is located within the area that the planning commission has recommended for open space development and that this plan has been approved by the town's legislative body. The designation of open space within a town is controlled by the enactment of General Statutes § 12-107e, not by virtue of the town adopting the recommendation of the plan of development.

Therefore, if a property owner meets the requirements set out in § 12-107e, the property owner may apply to the assessor for open space classification on a form prescribed by the Commissioner of Agriculture. See § 12-107e (b). Once the assessor receives the property owner's application for open space classification, § 12-107e

delegates to the assessor the determination of whether or not the property described in the application is located within such an area of open space. The assessor is further charged with determining whether or not there has been any change adversely affecting the essential character of the open space land designated in the plan of development. If the assessor determines that there has been no change, the statute requires that the assessor "shall" classify the land as open space land and include it as such on the Grand List.

In reviewing the assessor's actions in the present case, the court finds that the assessor made no determination as to whether the essential character of the open space land located on the subject property had changed. Instead, the assessor imposed his own condition that the use of the subject property, as a commercial airport operating under a special exception, had no minimum area requirement. As a result, the subject property, according to the assessor, did not qualify for open space designation pursuant to the requirements of the 1998 Amendment.

However, the court cannot read into the 1998 Amendment the assessor's requirement that, as a condition of being designated open space land, the land must meet a minimum area requirement except as it applies to building lots that have been subdivided with the intent of delaying construction on those lots.

Because the court finds that the assessor used an improper standard in determining the classification of open space land, as applied to the subject land, and because the

assessor's decision has an impact on the valuation of the subject property on the Grand List, pursuant to § 12-107e, the plaintiff's appeal as to the application for open space designation under count one is sustained without costs to either party.

Accordingly, the case is remanded to the assessor to consider the plaintiff's application for open space designation in accordance with this decision. The assessor must first make a determination on the plaintiff's application on whether the 43.04 acres of the subject land is eligible for open space designation before the issue of the subject's fair market valuation under count two may be considered. Since further action is required of the assessor, the court shall retain jurisdiction.

Arnold W. Aronson
Judge Trial Referee